

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

**Investigation into a complaint against  
Oxfordshire County Council  
(reference number: 18 009 005)**

**2 July 2019**

## The Ombudsman's role

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

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

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

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

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

### Key to names used

Mr & Mrs X    The complainants  
D                Their daughter

## Report summary

### Education – Alternative provision

Mr and Mrs X complained the Council delayed in providing their child, D, with a suitable education when she was not able to attend school for medical reasons. This caused the family significant distress and D missed out on education for 14 months.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

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

We welcome the work the Council has already carried out, and has planned, to address the fault identified in this and our previous investigation. This is satisfactory to address the service failures identified.

In addition, the Council has agreed to the following recommendations to remedy the injustice identified in this report.

### Recommendations to address the injustice caused to Mr and Mrs X and D

The Council has agreed to keep D's educational provision under review to ensure the number of hours tuition she is currently receiving is a suitable level of support.

Within three months of the date of this report, the Council has agreed to:

- to pay D £2,400 for the significant loss of education at an important time in her school life because it failed to provide her with a suitable education. The payment should be paid into an account in D's name but under parental control and used as Mr and Mrs X feel best for D's educational or social benefit;
- apologise to Mr and Mrs X for its failure to inform them of their appeal rights when they made an in-year admissions application in March 2017;
- pay Mr and Mrs X £500 to remedy the prolonged and unnecessary distress and anxiety the Council caused them; and
- provide us with evidence of its proposals for working with the family to ensure D receives appropriate educational provision from September 2019 when she begins her A level options.

### Recommendations to address the injustice that may have been caused to others

Given the failings we found in this report may have affected other children in its area, within four months, the Council has agreed to:

- 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 Education Act 1996 to identify:
  - the number of children brought to its attention by schools/academies as missing education;

- 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 FAP Panel failed to place a child.
- submit 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 [our previous investigation](#); and
- provide evidence to us the audit has been completed.

## **The complaint**

1. Mr and Mrs X complained that the Council:
  - failed in its statutory duty to arrange suitable education for their daughter, D;
  - did not act in line with statutory guidance when it insisted that D must be on a school roll before she could access a maintained special school (School H);
  - delayed in taking action at the relevant times; and
  - failed to update them on key events in a timely manner.
2. As a result, Mr and Mrs X say D missed out on education at a particularly important time in her schooling when she was studying for her GCSEs.

## **Legal and administrative background**

### **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
6. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

### **Provision of suitable education**

7. Section 19 of the Education Act 1996 states local authorities have a duty to make arrangements to ensure the provision of suitable education at school or otherwise for each child of compulsory school age who for reasons of illness, exclusion or otherwise may not for any period receive suitable education unless arrangements are made for them.
8. Statutory guidance '*Alternative Provision 2013*' and '*Ensuring a good education for children who cannot attend school because of health needs 2013*' advise local authorities on how to carry out this duty. The guidance says:
  - the duty means "*that where a child cannot attend school because of health problems and would not otherwise receive a suitable full-time education, the local authority is responsible for arranging provision and must have regard to this guidance*";

- the law does not specify when alternative provision should begin for pupils with additional health needs. But statutory guidance states local authorities should ensure pupils are placed as quickly as possible. They should arrange provision as soon as it is clear an absence will last more than 15 days. Local authorities should also liaise with appropriate medical professionals to ensure minimal delay in such provision;
  - the duty applies to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend;
  - the provision should generally be full-time unless it is not in the child's best interests. Full-time is not defined in law but should equate to what a pupil would receive in school. If they receive one to one provision for example, the hours of face to face provision could be fewer as the provision is more concentrated; and
  - if full-time education is not in the child's best interests because of their physical or mental health, local authorities should provide part-time education that aims to achieve good academic achievement, particularly in English, Maths and Science.
9. The statutory guidance says local authorities should not:
- withhold or reduce the provision, or type of provision, for a child because of how much it will cost; or
  - have processes or policies in place which prevent a child from getting the right type of provision and a good education.
10. Where a child does not have an Education, Health and Care Plan and is over the compulsory school age, local authorities have a power, but not a duty, to provide alternative provision of education. This means alternative provision is not required after the final Friday in the June of the academic year in which the child becomes 16 years old (Year 11 for most children).

### **Fair Access Protocol (FAP)**

11. The Schools Admissions Code 2014 sets out local authority requirements in relation to Fair Access Protocols (FAP).
12. Every local authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that, outside of the normal admissions round, unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.
13. The operation of the FAP is outside the co-ordination arrangements and is triggered when an eligible child has not secured a place under in-year admissions procedures.
14. The School Admissions Code 2014 states that as a minimum the FAP should include children who have been out of school for two months or more and have special educational needs, disabilities or medical conditions but do not have an Education, Health and Care Plan.
15. The Council's FAP states that where a child is without a school place, a placement will be agreed at the FAP Panel meeting at which the case is considered.

16. If the Panel is not able to make a decision on the most suitable placement, the Council will name a school after taking into account recorded comments of the Panel and any expressed preferences of the parent.
17. If a school refuses to accept a pupil when directed under the FAP:
  - if it is an authority-maintained school, the Council can direct the school to admit the child; or
  - if it is an academy or free school, the Council can make a referral to the Secretary of State to ask it to direct an admission. The Education and Skills Funding Agency manage these referrals.

### **School H**

18. School H is a community special school for children aged 3 to 18 years of age.
19. The Council has a service level agreement with School H. This states the school provides two types of educational provision:
  - an outreach teaching service for children resident in Oxfordshire and on the roll of a school in Oxfordshire who are not able to access mainstream school because of medical needs, including mental health needs; and
  - an in-patient service for children who are in hospital.

### **In-year school admissions applications**

20. The Council provides information to parents and carers about in-year school admissions applications. This says the Council aims to process applications within 15 days of receiving them. The information explains the process can sometimes take longer if the school is its own admissions authority.

### **How we considered this complaint**

21. We spoke to Mrs X and considered the information provided by her and the Council. This included correspondence between the Council and Mr and Mrs X and their MP, complaints correspondence, the service level agreement between the Council and School H, and the minutes of the relevant FAP Panel meetings.
22. We took the relevant legislation and statutory guidance into account. This included:
  - the Education Act 1996;
  - the School Admissions Code 2014;
  - statutory guidance "*Ensuring a good education for children who cannot attend school because of health needs 2013*"; and
  - statutory guidance '*Alternative Provision 2013*'.
23. We also considered our documents:
  - ['Out of school...out of mind? How councils can do more to give children out of school a good education'](#); and
  - [Guidance on Remedies](#).
24. We gave the complainants and the Council a confidential draft of this report and invited their comments. We took the comments received into account before the report was finalised.

## What we found

### What happened

25. D is of secondary school age. In December 2016, when she was in Year 9, she stopped attending her independent school due to anxiety and other mental health issues.
26. On 17 March 2017, the school informed the Council that D had left that day and was no longer on roll.
27. On 29 March 2017, Mrs X applied for an in-year school place at the three academies near to her home through the Council's co-ordinated in-year admissions procedure. The Council says it did not receive an application from Mrs X. Mrs X has provided a copy of an acknowledgement email she received from the Council on 29 March confirming receipt of her in-year admissions form. Mrs X received a second confirmation email from the Council on 26 April.
28. On 5 May 2017, Mrs X received a letter from the Council. This informed her that one Academy had refused D a place and a second Academy would consider her application at its next admissions meeting. The third Academy was its own admissions authority and so Mrs X would have to apply directly to the school. There is no evidence the Council took any further action. By this stage the Council was aware D had been out of school for approximately two months.
29. Mrs X asked for advice from a special educational needs, advice and support service. The advice and support service told her that if D was on the roll of School H, she should be able to receive home tutoring.
30. In September 2017, when D was due to begin Year 10, Mrs X contacted the Council to say she wanted D to be on roll at School H. She states she was informed by the Council that D must be on the roll of another school or academy before School H would accept her.
31. In October 2017, the Council received a second in-year school admissions application from Mrs X. This listed three academies. The Council says Mrs X did not include any medical evidence with the application to show D would not be able to attend school. However, Mrs X did state on the application form that D had anxiety and other mental health issues which were preventing her from attending school.
32. Two of the academies informed the Council they could not take D because they had no vacancies. The Council emailed the third Academy on 18 October to ask whether it could accept D. The Academy responded on 24 October and said it was setting up a meeting with Mrs X to explore the possibility of offering D a place.
33. Mrs X heard nothing from the Council about her application. Therefore, later in October, she wrote to her MP who contacted the Council. The Council responded on 30 October and said:

*"[D's] parents would like [D] to attend [School H] and to do so a referral is needed from the relevant state funded secondary school that a child attends. However, we do not have any corroborating evidence of the child's medical condition... [D] has now been classed as a child missing education and because of the difficulties experienced in finding a school place the issue will be discussed at the next Fair Access Panel... [D's] parents have a right of appeal for a place at any state funded school that has refused a place"*



34. The Council went on to say that if the FAP failed to identify a school for D the Council would nominate a school. If that school refused to accept D then, because the schools were academies, the Council could make a referral to the Secretary of State. The Council told the MP that the process of asking the Secretary of State to direct a school to take a pupil was slow and could take several months.
35. Mrs X says this was the first time she had been informed of her right to appeal. However, because the Council's FAP Panel was shortly due to hear D's case, Mrs X decided not to appeal but to wait for the outcome of this meeting.
36. Mrs X sent the Council a letter from D's GP and from the NHS Child and Adolescent Mental Health Services (CAMHS) on 10 November 2017 in preparation for the FAP meeting.
37. The FAP meeting was held on 22 November. The meeting was attended by the three academies near to where D lived which Mrs X had put on her application form. No agreement of a place for D was reached at the meeting. Mrs X says the Council did not update her on this outcome.
38. The Council wrote to Mrs X on 23 January 2018 with the outcome of her in-year school admissions application. This informed her that two academies had refused D a place. It provided Mrs X with details of how to appeal those decisions. In relation to the third Academy on the application form, the Council informed Mrs X it had opted out of the Council's admissions scheme and she would have to apply directly to the Academy.
39. Mrs X emailed the Council on 1 February 2018 for an update. The Council informed her that D's case would go to the next FAP meeting on 7 February.
40. The minutes of the February FAP meeting stated the Council had advised Mrs X that it would not be possible to offer D a place at School H. The Panel had also requested information from CAMHS in relation to D's mental health. Mrs X was not happy about this because she had already submitted information from CAMHS in November 2017.
41. A third FAP meeting was held on 14 March 2018. The minutes from that meeting stated *"the student has reported that [she is] currently unable to come out of the house... [School H] advised if [D] is put on any school roll they will not help as she will not attend... [School H] will accept a referral from [D] but they are minded to say they will not provide for [her] as [she is] too high level... [D] will have to go through their panel and they will decide if [she] can attend, however this was turned down previously through this panel. This is medical, not attendance. [D] has high anxiety and an eating disorder. They stated she was not fit to attend school. [School H] has recommended [an online educational provider] however this is an expensive proposition"*.
42. At this FAP meeting, the academies present set a condition that D must attend a meeting on site at school before any would consider accepting her.
43. Mrs X did not consider the condition to hold a meeting on-site to be realistic because D was not able to leave the house. As a result, in May 2018, Mrs X lodged an admissions appeal with one of the academies. Mrs X said that the condition discriminated against D because of her disabilities.

44. On 18 May, the Council made a referral to the Secretary of State, to direct one of the academies to accept D. However, the referral was rejected because one of the academies did not refuse to accept D at the March FAP meeting but said any offer was conditional on her first attending a meeting at the school.
45. Later that month, Mrs X made a formal complaint to the Council. She complained that the Council had:
- delayed in making a referral to the Secretary of State; and
  - failed to provide D with a suitable education after she stopped attending school in December 2016.
46. On 23 May 2018 a fourth FAP meeting was held. At this meeting, one of the academies agreed to accept D without fulfilling the condition that she attend a meeting at the school prior to her starting. On the same day, the Council emailed the Academy and asked it to put in a referral to School H as a matter of urgency.
47. The Council responded to Mrs X's complaint on 8 June 2018. It failed to address Mrs X's complaint that the Council delayed in making a referral to the Secretary of State. It offered an "*unreserved apology*" for the delays in providing D with a suitable education.
48. Mrs X escalated her complaint to the next stage of the Council's complaints procedures on 20 June 2018. The Council responded on 18 July. Its response included the following details "*The County Council discharged its duty... through a service level agreement with [School H]. To access these services a child must be on the roll of a school or academy in Oxfordshire*".
49. Since May 2018, D has been receiving home tutoring from School H for one hour a day, four days a week. D is also receiving the support of CAMHS on a weekly basis. Mrs X says this level of support is appropriate for D. However, because D missed out on education for a significant period, she has had to reduce the number of GCSEs she is studying for from ten to five subjects.

### **Our previous investigation**

50. In September 2018, we issued a decision statement in relation to a similar complaint against the Council (case reference [17019136](#)). We found fault with the Council and said it failed in its duty to ensure that the child concerned received suitable alternative education for 12 months. The Council agreed a payment to recognise the loss of education and a review of procedures.
51. The Council also said it was actively working to revise its system to prevent similar failings occurring again in future. It had appointed to a senior management position and confirmed it would carry out a review of the admissions process for School H once the officer was in post.
52. During our investigation, the Council also confirmed that following staffing changes, work had started to develop new procedures to ensure the Council worked more effectively with School H.

53. In addition, the Council had started a review of the FAP which would apply to both schools and academies. If approved, the new procedures would ensure that if the FAP Panel could not agree a placement for a child, the Council would make the decision on a school or academy within two days of the panel meeting. In addition, the Council and School H would begin discussions about admission for any child who had no realistic prospect of being medically fit to attend a school but was not on a school roll.
54. The Council told us recently that as a result of this and our earlier investigation:
- it had completed a revised in-year FAP;
  - it had held a seminar with academies to discuss working together to meet their combined statutory duties;
  - School H was currently considering a revised service level agreement and there was agreement that it would accept children who were not on roll at a school;
  - since Easter 2019, the Council had introduced procedures to ensure timely identification of pupils with medical needs who were at risk of missing education; and
  - it had put in place a new learner engagement strategy.
55. The Council explained it had a large proportion of academies. When the Council maintained all schools, it had the power to instruct schools to accept pupils on roll when required. The Council did not have that power with academies and instead, it had to make a referral to the Secretary of State which created considerable delays. The Council said its new procedures would reflect the different system that was needed to meet these challenges. The Council hoped its new processes would allow referrals to the Education and Skills Funding Agency to take place in a quicker timeframe.

## **Conclusions**

### **Failure to provide D with a suitable alternative education**

56. The Education Act 1996 states councils are responsible for arranging suitable education for pupils who for reasons of illness, exclusion or otherwise may not for any period receive suitable education. This applies whether the child is on a school roll or not.
57. For children who cannot attend school for medical reasons, statutory guidance states councils should provide a suitable education as soon as it is clear that the child will be away from school for 15 days or more, whether consecutive or cumulative. Councils should liaise with appropriate medical professionals to ensure minimal delay in ensuring such provision.
58. The Council first became aware D was not in school in March 2017, when her independent school said she had stopped attending. By this stage D had already been out of education for three months. However, because the Council was not aware of this until March 2017, its duty to arrange a suitable education for D began from that date.

59. Therefore, the Council failed to act in line with the Education Act 1996, the School Admissions Code 2014 and the statutory guidance when it did not arrange a suitable education for D for 14 months from March 2017 to May 2018, when it arranged for home tuition. This is fault.

**The Council informed Mr and Mrs X that D had to be on a school roll to access School H**

60. Section 19 of the Education Act 1996 states councils have a duty to make arrangements to ensure the provision of suitable education at school or otherwise for each child of compulsory school age who for reasons of illness, exclusion or otherwise may not for any period receive suitable education unless arrangements are made for them. This duty is binding.
61. The Council told Mrs X that D could not access School H unless she was on the roll of another school. School H is a maintained special school. Therefore, admission to it falls under the School Admissions Code 2014 and the Council could have admitted D directly to the school. Instead, however, the Council imposed a condition on D thus creating a barrier to admission to School H. This was despite it being aware that the three academies close to D's home were reluctant, or refusing, to accept her. If the Council wished to pursue the condition that a child must be on another school roll before School H would accept them, then it should have taken other steps to ensure D received suitable education. Instead it took no effective action. As a result, the Council denied D the opportunity to receive the suitable education which it had a duty to arrange for her. This is fault.
62. Because of the Council's fundamental failure to act in line with its duties, the misinformation it provided Mrs X and the fact this is the second time a complaint about these issues has come to us, the Council should take steps to establish whether other children have been affected by the faults identified in this report. We have made recommendations to address this matter at the end of this report.

**The Council delayed in referring D to a FAP Panel meeting**

63. The School Admissions Code 2014 state children who have been out of school for two months or more and have special educational needs, disabilities or medical conditions but do not have an Education, Health and Care Plan fall under the FAP procedures. Because D had been out of school since December 2016, she already met both requirements when the Council was informed in March 2017 she was out of school. However, it failed to take her case to the FAP Panel until November 2017, 11 months after she had been out of education. The Council failed to act in line with the School Admissions Code when it delayed referring D to the FAP. Furthermore, during this period there is no evidence the Council took any steps to address the fact D was without a suitable education.
64. These delays, the Council's failure to provide D with a suitable education and its failure to act in line with legislation are faults.

**The Council failed to identify a school place at three FAP Panel meetings**

65. The Council's FAP procedures states that where a child is without a school place, a placement will be agreed at the FAP meeting at which the case is considered. If the Panel is not able to make a decision on the most suitable placement, the Council will name a school after taking into account recorded comments of the Panel and any expressed preferences of the parent.

66. The Council failed to identify a school place on three occasions when the FAP Panel met in November 2017, February 2018 and March 2018. This was not in line with its own policy or the Schools Admissions Code. The Council's failure to act in a timely manner led to significant and avoidable delays in ensuring D received a suitable education and compounded the Council's failure to meet its duty under section 19 of the Education Act. All of this is fault.

**Considering of the costs of alternative provision**

67. At the March 2018 FAP meeting, School H indicated it may not be able to take D because of her mental health conditions. It suggested a private online educational provider might be more suitable for D. The minutes record the comment that School H had recommended a private online educational provider but this was an "*expensive proposition*".
68. The statutory guidance says local authorities should not withhold or reduce the provision, or type of provision, for a child because of how much it will cost.
69. The Council failed to take steps to follow up School H's recommendation or to explore whether a mainstream academy or School H itself were realistic propositions for providing D with a suitable education. This is fault.

**Condition to attend a meeting on school premises before D would be accepted onto the school roll**

70. At the third FAP meeting, the academies set a condition on admitting D to their roll. They stated she must first attend a meeting on the school premises. Mrs X considers this to be discrimination because D's medical conditions meant she was unable to fulfil this requirement.
71. We have not investigated this matter because we cannot investigate the actions taken by schools.

**The Council delayed in taking action at the relevant times and failed to update Mr and Mrs X on key events in a timely manner**

72. Mrs X made an in-year admissions application in March 2017. The Council denied receiving this, but Mrs X sent us two emails from the Council confirming receipt. We are concerned that the Council's record keeping prevented it from providing us with the information we requested. However, the Council responded to the in-year application within five weeks of receiving it. Although that is longer than stated on its website, we do not consider this delay amounts to fault.
73. In its emails to Mrs X, the Council failed to inform her of her appeal rights against the school which had refused D a school place. This is fault.
74. As a result, Mrs X was not made aware of her appeal rights until her MP received a response from the Council seven months later in October 2017. This caused unnecessary delay.
75. Mrs X made a second in-year admissions application in October 2017. The Council took around eight weeks to respond to her. This was an unacceptable delay and it is fault.
76. The first FAP meeting took place in November 2017. The Council failed to provide Mrs X with details of the outcome of the meeting. It was not until Mrs X emailed the Council in January 2018 that she discovered D's case was to be considered again at a second FAP meeting.

77. The Council's failure to update Mrs X after the meeting is poor administrative practice and this is fault.

### **The Council's response to Mr and Mrs X's complaint**

78. In its final response to Mr and Mrs X's complaint the Council said "*The County Council discharged its duty... through a service level agreement with [School H]. To access these services a child must be on the roll of a school or academy in Oxfordshire*".
79. This is incorrect for reasons already explained in this report. We are concerned that the Council continued to believe it had met its duty to provide D with a suitable education even though the facts demonstrated this was not the case. Furthermore, one of the major reasons D had been without education for 14 months was because of the service level agreement with School H and the condition D should be on a school roll. We have made recommendations to ensure the Council is aware of its duties under the Education Act.

### **Injustice to D and Mr and Mrs X caused by the Council's fault**

80. The failure of the Council to act in line with the Education Act 1996, the School Admissions Code 2014 and the statutory guidance left D without a suitable education for 14 months. This caused a significant and prolonged personal injustice to an already vulnerable child.
81. Furthermore, from September 2017 to May 2018, D was in her first year of GCSEs. Therefore, she missed out on education during a particularly significant period in her education.
82. Statutory guidance says:
- councils should provide suitable full-time education (or as much education as the child's health condition allows);
  - while 'full-time' is not defined in law, pupils in alternative provision should receive the same range, quality and amount of education as they would receive in a maintained school;
  - if a child receives one to one provision the hours of face to face provision could be fewer than full-time, as the provision is more concentrated; and
  - good alternative provision is that which appropriately meets the needs of pupils and enables them to achieve good educational attainment on par with their mainstream peers particularly in English, Maths and Science.
83. Mrs X says D had to drop half of her GCSEs from ten to five subjects because of the Council's failure to provide her with alternative education. She says she is now happy with the current level of education D is receiving which is four hours a week with tutors who are specialists in the subject areas D is studying in.
84. It cannot be known for certain whether D might have been able to continue studying for all the GCSEs she started if the Council had provided home tuition earlier. However, D appears intellectually capable of continuing her GCSE studies with just four hours a week tuition after a study gap of 17 months. This indicates it is more likely than not that she would have been able to keep studying all her GCSE subjects had tuition started earlier.
85. The Council should make D a payment to acknowledge the significant injustice she suffered. In deciding what that payment should be we have taken into consideration the prolonged period of time D was without any education, the

failure of the Council to act at all for seven months, the timing of events which occurred during her examination years and the fact D lost the opportunity to study for all the GCSEs she originally selected.

86. We have also taken into account the fact that D's medical conditions mean she would not have been well enough to receive a full-time education together with Mrs X's comments that the current support of four hours a week tuition is at the right level.
87. Mr and Mrs X have also suffered prolonged and unnecessary distress and anxiety during this period, frustration when the Council failed to update them at times after key events and time and trouble in bringing their complaint to the Council and to us. The Council should also make them a payment to reflect this injustice.

## **Recommendations**

88. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
89. We welcome the work the Council has already carried out, and has planned, to address the fault identified in this and our previous investigation. This is satisfactory to address the service failures identified in this report.
90. In addition, the Council has agreed to the following recommendations to remedy the injustice identified.

### **Recommendations to address the injustice caused to Mr and Mrs X and D**

91. The Council has agreed to keep D's educational provision under review to ensure the number of hours tuition she is currently receiving is a suitable level of support.
92. Within three months of the date of this report, the Council has agreed to:
- to pay D £2,400 for the significant loss of education at an important time in her school life because it failed to provide her with a suitable education. The payment should be paid into an account in D's name but under parental control and used as Mr and Mrs X feel best for D's educational or social benefit;
  - apologise to Mr and Mrs X for its failure to inform them of their appeal rights when they made an in-year admissions application in March 2017;
  - pay Mr and Mrs X £500 to remedy the prolonged and unnecessary distress and anxiety the Council caused them; and
  - provide us with evidence of its proposals for working with the family to ensure D receives appropriate educational provision from September 2019 when she begins her A level options.

### **Recommendations to address the injustice that may have been caused to others**

93. Given the failings we found in this report may have affected other children in its area, within four months, the Council has agreed to:
- 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 Education Act 1996 to identify:

- the number of children brought to its attention by schools/academies as missing education;
  - 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 FAP Panel failed to place a child.
- submit 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 [our previous investigation](#); and
  - provide evidence to us the audit has been completed.

## **Decision**

94. We have completed our investigation into this complaint. There was fault leading to injustice. The Council has agreed to our recommendations to remedy this.