

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

**Investigation into a complaint about
Somerset Council
(reference number: 24 003 239)**

07 January 2025

The Ombudsman's role

We independently and impartially investigate complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

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

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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

Key to names used

Ms B	The complainant
Ms K	Her daughter, a young person

Report summary

Education and Children's Services – special educational needs provision and Education, Health and Care plans

As part of an earlier investigation, the Council agreed with us to provide speech and language therapy (SALT) for Ms B's daughter, Ms K, in line with her Education, Health and Care (EHC) Plan. It also agreed to make ongoing payments and, if it could not provide SALT, to complete a fundamental review of the situation and share this with Ms B and us.

Ms B complained that the Council failed to provide the remedy as agreed with us.

Ms B says this caused her distress and frustration and meant that her daughter missed the SALT she was entitled to.

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 also recommend the Council should:

- apologise to Ms B and Ms K. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The Council should consider this guidance in making the apology we have recommended;
- pay Ms B £750 to recognise the distress and frustration it caused her; and
- review what went wrong in this case. It should use the findings of the review to put in place robust arrangements to ensure that actions it agrees to take as a result of Ombudsman recommendations are complied with, and that there is senior management oversight that this is being done. The outcome of the review and the steps to be put in place to prevent a recurrence should be reported to its Cabinet.

The Council has accepted these recommendations.

The complaint

1. Ms B complained that the Council failed to provide a remedy previously agreed with us. She said the Council has not provided speech and language therapy (SALT) for her child, nor has it shared the fundamental review or action plan as agreed.
2. Ms B says her daughter has missed out on the SALT provision which she is entitled to and which allows her to properly access her education. The Council has also caused Ms B distress, uncertainty, and frustration.

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. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

Relevant law and guidance

5. A child or young person with special educational needs may have an Education, Health and Care (EHC) Plan. This document sets out the child's needs and what arrangements should be made to meet them. The EHC Plan is set out in sections. We cannot direct changes to the sections about their needs, education, or the name of the educational placement. Only the tribunal or the council can do this.
6. The council has a duty to make sure the child or young person receives the special educational provision set out in section F of an EHC Plan (Section 42 Children and Families Act).

How we considered this complaint

7. We considered the information provided by Ms B and discussed the issues with her. We considered the information provided by the Council including documents from Ms K's file. We also considered the law and guidance set out above. We referred to our [guidance on remedies](#) which can be found on our website.
8. We gave Ms B and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

9. Ms B's child, Ms K has a rare condition which means that stress impacts on her physical health and can have serious health consequences. At the time of this investigation, Ms K was approaching the end of college. Ms K could not reach her potential at college without special educational needs provision. Ms K has an EHC Plan. This describes how Ms K has difficulty processing verbal information and is likely to misinterpret what is being said to her. She is not confident

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- expressing her views and when distressed can shut down. Section F of the Plan includes that Ms K needs SALT and occupational therapy (OT).
10. Ms B complained to us about how the Council had handled Ms K's special educational needs. In October 2023, we issued a final decision. We found the Council:
 - took too long to issue a final EHC Plan, taking an additional 20 weeks longer than the law allows. This caused distress and uncertainty to Ms B and Ms K;
 - did not send the EHC Plan to Ms K's college in good time, which meant that the college was not fully aware of her agreed provision. Ms B described how, without this support, Ms K could not go to college;
 - did not start its search for SALT and OT soon enough. It agreed to backdate payments for these therapies so that once the Council had commissioned a therapist, Ms K could have catch-up sessions. However, it then could not find therapists for SALT or OT and this was service failure. Again, Ms K missed out on the support that would allow her to properly access her education; and
 - did not always respond to Ms B's contact in good time and failed to take account of her need for reasonable adjustments in its communications with her.
 11. The Council agreed to apologise to Ms B and make a symbolic payment to recognise the education Ms K had missed, and for the distress and frustration it had caused Ms B. The Council also agreed to the following.
 - It would pay Ms B £50 a week to reflect the impact of the missed OT and SALT from April 2023 ongoing until it put SALT and OT in place.
 - If the Council could not provide the therapies within six months, it would complete a fundamental review of the situation and share a plan of action with Ms B.
 - It would develop an action plan to show how it intended to address the ongoing lack of OT and SALT availability in its area. The Council agreed to take the action plan to the relevant committee for democratic scrutiny and provide us with an update, setting out the actions agreed to improve this area of provision.
 12. The Council apologised to Ms B and made the initial payments as agreed. It also provided some OT. However, Ms B returned to us in May 2024 because the Council had still not provided the SALT, had not carried out a fundamental review nor produced an action plan of how it would do so, and had not made the ongoing payments of £50 a week.
 13. We opened an investigation into the Council's failure to comply with our recommendations. We found Ms B had suggested a SALT provider that her daughter had previously worked with. The Council did not contact the provider until January 2024 by which time she had no capacity to work with Ms K. Ms B has shared an email from the provider to the Council that says it had taken too long to contact her, and suggested the Council still owed the therapist for work previously completed.
 14. The Council did not contact Ms B again until May. It asked Ms B if she had any further suggestions for a SALT provider. Ms B told the Council that once again the SALT provider she suggested had no capacity because it had taken the Council too long to contact her.
 15. Ms B pointed out to the Council that according to the remedy it had agreed with us, it should have searched for a therapist, made ongoing payments, and shared

an action plan with her about how it was going to commission SALT for her child. The Council apologised and said that another member of staff would be in touch about the remedy it had agreed with us.

16. The Council did not take any action to secure SALT for Ms K until the beginning of July 2024, when it consulted ten therapists, two of which were able to meet Ms K's needs. Unfortunately, by this time Ms K did not feel she could build a relationship with these therapists, especially since the college year had already ended and she was due to start university. The EHC Plan ceased in July 2024 when Ms K finished college.
17. The Council then agreed to Ms B's suggestion to fund SALT provision over the summer holidays with the therapist that Ms K had previously worked with. The provider delivered catch-up SALT from mid-August. They could not deliver all the agreed sessions in the time available before Ms K moved to university, and the Council agreed to extend the time frame. This will allow the provider to make recommendations to Ms K's university for her ongoing support.
18. The Council did not make the agreed ongoing payment. It explained that it intended to make a further payment for the continued missed SALT provision at the end of the spring term but had failed to do so. Instead, the Council did not make the payments until August 2024.
19. We asked the Council for its ongoing plan to address the delays and lack of SALT and OT provision more generally. It said:
 - there is a national shortage of therapists and it continues to rely on the private sector but there remains limited availability;
 - SALT and OT provision is part of the Council's Special Educational Needs and Disability (SEND) strategy and Accelerated Progress Plan, both of which report to its SEND Partnership Board;
 - it is developing a way to gather information about the numbers of children and young people who need therapies;
 - it is working with the NHS to recruit therapists that will carry out enhanced EHC needs assessments so that it can better predict the need for future SALT and OT provision; and
 - it has provided funding to the Children and Young People's Therapy Service to support the early identification of intervention work required in schools and to meet the provision described in EHC Plans. It is also considering ways to commission the Service to provide SALT and OT, in consultation with the NHS.

Conclusions

20. Despite agreeing to our recommendations in October 2023, the Council failed to take any real action to find a SALT provider to deliver Ms K's EHC Plan until a whole academic year later. It did not start its search properly until July 2024. This was fault by the Council. By then Ms K had left college and only had a limited time until she was due to start university at which point her EHC Plan would cease. It was understandable that Ms K felt there was not enough time to build a relationship with a new provider.
21. This is likely to have been particularly distressing and frustrating to Ms B and Ms K because the SALT provider they had suggested and who Ms K had a good working relationship with, did at various times have capacity to work with Ms K,

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- but these opportunities passed because the Council took so long to contact the provider.
22. The Council had agreed to review the situation and make a plan of how it would deliver SALT for Ms K if it had not managed to do so within six months. The Council failed to do so. It also failed to make the ongoing payments and only paid these in one lump sum in August 2024. The ongoing payments were to remedy the continuing missed provision and Ms B had intended to use these to support her daughter.
 23. We had previously found that the Council's failure to issue the EHC Plan on time or provide SALT for Ms K, meant that she had missed the support for the academic year 2022/23, which was needed to help her achieve her potential at college.
 24. It is extremely disappointing that despite agreeing a fair and achievable remedy with us in August 2023, the Council did not improve its service to this family. It failed to take any action to provide SALT for Ms K for the whole academic year. The Council has started work to improve SALT and OT provision generally but did not take any action to resolve the lack of SALT for Ms K personally.
 25. We note that the Council did agree catch-up sessions over the summer holidays and extended this to allow the provider more time to work with Ms K and to make recommendations to the university. However, the Council's lack of action up until that point means that Ms K missed out on the support she was entitled to for a further year. These two years of missed provision are particularly important as Ms K now starts her university education without the benefit of the SALT that her EHC Plan entitled her to.
 26. Ms B sent us a clinical psychologist's report that says the lack of provision has had a detrimental effect on Ms K's mental health. The SALT provider has also confirmed that the work she has been able to do with Ms K in the summer holidays has benefited her. The provider's report says that had Ms K received the SALT under her EHC Plan, she would have been in a much better position to start university and the increased demands that brings. The provider also says that Ms K now needs more SALT because she has not received what she was entitled to under her EHC Plan.
 27. In our earlier investigation, we also found that the Council's delays and poor communication caused Ms B distress and frustration. Despite our findings, the Council did not improve its communication with Ms B, with long periods of no contact at all. The Council's failings caused Ms B further distress, uncertainty and frustration and meant she had to complain to us again.
 28. Overall the Council's response to our earlier recommendations shows failings of effective officer leadership and governance. This is fault. Despite agreeing the recommendations, they were not owned by the organisation nor effectively followed up. It was not until we opened a new complaint and sent formal enquiries to the Council in June 2024 that it belatedly began to take effective action. If a council fails to take our recommendations seriously, it undermines faith in the Ombudsman service and shows a blatant disregard for Ms B and particularly Ms K.

Recommendations

29. 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)

30. In addition to the requirement set out above the Council has agreed to take the following action to remedy the injustice identified in this report.
- Within one month of the date of this report, the Council will:
 - write to Ms B and to Ms K separately to apologise for its failings. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The Council should consider this guidance in making the apology we have recommended; and
 - pay Ms B £750 in respect of the additional distress it caused her.
 - Within three months of the date of this report, the Council will review what went wrong in this case. It should use the findings of the review to put in place robust arrangements to ensure that actions it agrees to take as a result of Ombudsman recommendations are complied with, and that there is senior management oversight that this is being done. The outcome of the review and the steps to be put in place to prevent a recurrence should be reported to its Cabinet.
31. The Council should provide us with evidence it has complied with the above actions.

Decision

32. We have completed our investigation into this complaint. There was fault by the Council causing injustice to Ms B and Ms K. The Council should take the action identified in paragraphs 29 to 31 above to remedy that injustice.