



## BACKGROUND

The role of a Local Government and Social Care Ombudsman ("LGSCO") in relation to special educational needs (SEN) involves addressing complaints related to the provision of SEN and disabilities services. Parents, guardians, and young persons can submit complaints to the LGSCO if they believe that a child's needs are not being adequately met or there are issues with the support and services provided.

SEN complaints that could be brought before the LGSCO include:

- **Inadequate support:** If a pupil with SEN does not receive adequate assistance, accommodations, or resources to enable them to participate in school on an equal footing with their peers.
- **Assessment or support delays:** When significant delays occur in the Education, Health and Care needs assessment process, when issuing an Education, Health, and Care Plan ("EHCP"), completing an annual review, or in providing the essential support services stated in an EHCP.
- **Lack of Communication:** If parents or guardians believe that there is a lack of communication or collaboration between the local authority and other relevant parties involved in the education of a pupil with SEN.
- **Disputes Regarding the EHC Plan:** Delays or failure in the implementation of the provision specified in the EHCP, failure to carry out an annual review, or how the local authority dealt with a personal budget request.
- **Transportation Issues:** Complaints about transport arrangements for children with SEN, particularly if access to appropriate transport is difficult or transport services are not supplied as established in the EHCP.
- **Decision-making:** How the local authority incorporated children and young people over the age of 16 in decision-making.
- **Local Offer:** Complaints about the Local Offer requiring local authorities to provide advice and information about SEN provision in the area.
- **Tribunal recommendations:** Complaints about failure to implement a Tribunal recommendation related to social care provision in an EHCP or failure to respond to a Tribunal recommendation within 5 weeks.

The role of the LGSCO is to investigate these complaints impartially and offer solutions to remedy the issues. The aim is to ensure that children with SEN receive the support and services to which they are legally entitled. The LGSCO helps to improve the overall quality of education for children with SEN by addressing complaints and encouraging positive change in the education system.

## ANALYSIS

In July 2023, the LGSCO published its Review of Local Government Complaints 2022 – 23 ("The Review"). The LGSCO upheld families' complaints about English local



July 2024

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authorities' Education and Children's Services. These included, among other things, complaints regarding Education, Health and Care processes, SEN provision, school transport, and admissions.

The complaint data for 2022-23 shows:

- The LGSCO received and upheld more complaints about Education and Children's Services than any other service area, at nearly a quarter of all cases (24%).
- The number of initial complaints in Education and Children's Services climbed from 3,145 to 3,642.
- 1,263 detailed investigations were conducted and 21 reports relating to Education and Children's Services were published.
- 84% of the extensive investigations into complaints about the provision and reaction to complaints by local authorities' Education and Children's Services were upheld. This is an increase from 77% the previous year.
- 92% of complaints relating to SEN provision and EHCPs were upheld.
- 90% of complaints in relation to alternative education provision were upheld.
- The LGSCO published 38 public interest reports, with Education and Children's Services as well as Adult Care Services and Housing being the subject matter in most cases.

*"We continue to find the highest proportion of fault in complaints about Education and Children's Services, and they remain some of our most high-profile cases, featuring in more than half of our public interest reports. The themes of these reports are all too familiar – failure to properly provide for Special Educational Needs and Education, Health and Care plans are common features. While we are aware of the challenges authorities face, at the heart of many of these complaints are children and young people going without the support they are entitled to, and we will continue to hold authorities to account for what they are required to provide."*

*Paul Najsarek, Interim Local Government and Social Care Ombudsman, July 2023*

The Review reflects on the criticisms of the sector that the LGSCO reviewed throughout the year and illustrates the usefulness of complaints as a mechanism for learning and service improvement.

## HOW THE LOCAL AUTHORITY COULD IMPLEMENT CHANGE

The LGSCO's recommendations to resolve complaints remain a significant emphasis - they have made more service improvement recommendations in the last year than ever before (2,412 recommendations based on delivering policy change, procedure review or staff training). Where they uncover a flaw, they will consistently request that local authorities make things right for those who filed the complaint, as well as examine others who may have been similarly affected or make recommendations to enhance services for future users. These recommendations can be hugely impactful should the local authorities implement them, resulting in significant changes to how services are delivered.

While acknowledging the demanding environment in which local authorities work, Interim LGSCO Paul Najsarek noted that the evidence within the Review points to the importance of attending to the experience of residents and the need to invest in and support complaint functions. He stated that *"it is a false economy not to. Putting people who use services at the centre of the complaints system is important for achieving good outcomes and we want to support authorities to do this."*

In many complaint cases, the LGSCO recommend more than one type of remedy. For instance, they may recommend a local authority makes an apology, pays a sum of money, and reviews a policy or procedure. The recommendations for corrective action are non-binding, and in most situations, local authorities agree to follow the advice. In 99.3% of cases across the services, the LGSCO remained satisfied with the local authorities' compliance with recommendations. However, in 19% of cases, compliance was not within the agreed timescales and was late. To ensure that remedies are implemented on time, the LGSCO recommends that local authorities should consider the following:

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- *“The timescales proposed at the draft decision stage for implementing recommendations to ensure they are achievable.*
- *Maintaining a record of agreed recommendations and communication and advising the Ombudsman of any delays.*
- *Notify the Ombudsman promptly when a remedy is completed, including the provision of any necessary proof.*
- *Establish clear mechanisms for expediting apologies and compensation to complainants; these should be straightforward tasks to execute on time.”*

Additionally, the LGSCO can take action when a local authority fails to execute its recommendations (there were 17 such incidents in 2022-23), for example they could:

- Publish a public interest report.
- Open a new investigation into the local authority's failure to offer the agreed solution.
- Non-compliance is also reported publicly on the LGSCO's website. This therefore has a further negative impact on the local authority's reputation.

## KEY TAKEAWAYS FROM THE REVIEW

The Review evidences the ever increasing number of complaints in the area of SEN. When the LGSCO first published an annual report in 2014, complaints relating to Education and Children's Services were just 17% of their workload rather than almost a quarter.

The Review offers a comprehensive insight into the current state of complaints handling within the realm of SEN. Through a meticulous analysis of data, responses, and local authorities' feedback, this review sheds light on both commendable progress and persistent challenges. The review highlights numerous cases in which local authorities have demonstrated an intention to improve their responses to concerns about SEN. Interventions have been seen to be more timely and personalised, contributing to a better experience for parents, guardians, and young persons. However, the review does not shy away from acknowledging the sustained concerns that persist. Instances of non-compliance with established regulations and guidelines remain a challenge. Some families continue to report difficulties in accessing necessary support and arrangements for their children. The invaluable insights from parents, guardians and young persons have underscored the importance of an inclusive approach to complaints handling. Their feedback contributes not only to identifying issues but also to shaping the recommended improvements.

Finally, the Review serves as both a reflection of progress made and a call to action. It reiterates the need for continuous vigilance in addressing complaints related to SEN, reaffirming the notion that a collaborative effort between local authorities, professionals and families is essential. By heeding the insights presented in this review and implementing the suggested enhancements, local authorities can move closer to ensuring that every child receives the education they deserve.

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### About Pathfinder Legal Services Ltd's SEN Team

We have a highly skilled team of lawyers specialising in Special Educational Needs and Disability Tribunal cases. We advise and represent local authorities in appeals and advise schools in respect of disability discrimination claims. Our lawyers have a wealth of experience in identifying needs, provision, and placement issues and work closely with SEN officers, educational psychologists, and other specialist witnesses. We pride ourselves on our collaborative approach with parents, for whom the tribunal process can be very stressful. We get to know our client and their schools and colleges very quickly and are able to tailor our service to our client's needs.

### About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County and Central Bedfordshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at [operations@pathfinderlegal.co.uk](mailto:operations@pathfinderlegal.co.uk)

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