

The Local Government Ombudsman (LGO)

- Complaints Regarding Delays to the EHC Needs Assessment



Introduction

The Local Government (LGO) and Social Care Ombudsman can investigate a complaint where a council has seemingly failed to appropriately address a child's special educational needs (SEN). This includes **delay** in assessing a child and issuing an Education Health and Care Plan (EHCP) as well as failing to implement the provision within an EHCP or to carry out an annual review.

The law generally prevents the Ombudsman from investigating complaints for which a remedy is available through an appeal to the SEND Tribunal. This means that the Ombudsman cannot investigate a complaint when the issues it raises can be dealt with through an appeal to the First Tier Tribunal (Special Educational Needs and Disability) (SEND).

In cases where there is not a current recourse to the SEND Tribunal (e.g. where an EHCP is yet to be finalised), where you have already completed the local authority's formal complaints process and are not satisfied with its response, you can then complain to the Ombudsman.

Complaints relating to your child's EHC needs assessment process

If your complaint relates to a delay with your child's EHC needs assessment process (something which is a national issue at present due to a lack of Educational Psychologists) you are able to visit the Ombudsman website (www.lgo.org.uk) and register your details to complete an online complaint form.

The complaint form will ask you some questions about your complaint and guide you on the type of information required. This includes telling the Ombudsman what your complaint is about and how this has affected you. You will also need to explain why you are not happy with the Local Authority's response to your complaint. The Ombudsman will ask for a copy of the last letter you received from the Local Authority, after it considered your complaint, so make sure you have a copy of this to hand.

If you do not have access to the internet, you are able to call the Ombudsman on 0300 061 0614 for assistance, or there is an option to submit a postal complaint form (although the Ombudsman website warns this will take longer for them to process). [Click here to download the LGO postal complaint form](#). You will need to send it to the address on the form.

Advice on information you will need to provide

1) You will need to explain briefly what your complaint is about and why you are not happy with the council or organisation's response. For example:

"The Local Authority initiated an EHC needs assessment on (give date) and has failed to provide an Educational Psychologist assessment report as part of this process, citing a lack of educational psychologists available in the area. We do not believe this is an acceptable exception. This situation has caused an unacceptable delay which has meant the EHC needs assessment process is now significantly outside the 20-week statutory timeframe. I am aware the Local Authority must abide by the statutory and legislative requirements under the SEN legislation and guidance."

Advice on information you will need to provide (continued from previous page)

2) You will need to explain how you (and your child) have been affected by the situation.

The fault has caused an injustice. This will obviously be different for everyone's own personal situations, but you could include considerations like how the delay has impacted on your child's access to schooling/their mental health and emotional wellbeing/if you've had to give up work/unnecessary stress and anxiety for your family/your child being out of education completely/stuck in an unsuitable placement/not being able to access a suitable placement/a delay to exercise your right to the SEND Tribunal etc...

3) The Ombudsman will want to know what you want the Local Authority to do to put things right.

Here, you would be asking for the Local Authority to conclude the process or outstanding considerations as a matter of urgency. If you feel you can suggest a workable solution or can provide reports/evidence to help with the resolution of the issue, explain what this is. Other 'remedies to injustice' are:

- suggesting a local authority makes an apology to the complainant
- suggesting a local authority reviews its working practices
- suggesting a local authority reviews its staff training
- suggesting financial compensation to the complainant

SENDIAS may be able to take a look at any wording you put together and make suggestions, if necessary, prior to submitting your complaint. Please contact them if this is something you think you may need.

Next Steps

The LGO aims to assess all complaints within 28 calendar days. After the initial assessment they will decide whether or not to do a full investigation of the complaint. The LGO aims to complete all investigations within 26 weeks, although complex cases may take longer. After the investigation they will issue a decision and can make recommendations to local authorities to put right the injustice.

These are only 'recommendations' – meaning they are not binding on the local authority in the same way that, for example, a court judgment would be – but it is very rare for a local authority to ignore a recommendation.

Service Statement

The role of the SENDIAS service is to ensure all parents, children and young people have access to impartial information, advice and support so they can make informed decisions related to their situation. Any information that is shared with the service is in confidence unless permission has been obtained to share this with any individuals, services and agencies that may be able to help in the circumstances.

To view our policies, and privacy notice, please go to our website and choose the 'About Us' button, and 'How We Work' from the drop-down list.

How To Contact Us

Helpline: 0330 222 8555

Email address:

send.ias@westsussex.gov.uk
(parents/professionals)
cyp.sendias@westsussex.gov.uk
(age up to 25 yrs)

Website: www.westsussexsendias.org

SEND: Special Educational Needs and/or Disabilities

To view all SENDIAS factsheets online: <https://bit.ly/3apJBmu>

or scan QR code:

