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Failure by the local authority to issue or implement an Educational Health Care Plan – a guide on the routes to justice through the ombudsman and tribunal

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This booklet is part of a research project to understand pathways through the justice system for people with SEND issues. Marta is a made up example to help explain how – in an ideal case – she can access help from advice providers, SEN tribunal or the Ombudsman.

Here you can find the accompanying report and map:

<https://www.nuffieldfoundation.org/project/delivering-administrative-justice-after-the-pandemic>

Here is Marta and her two children.

Marta's son, Thomas, has special educational needs (SEN).





Thomas has been struggling to learn at school and has also been experiencing bullying by other children.

Marta wants to find help for her son, so she asks his school for assistance.

She speaks to the Special Educational Needs Coordinator but is still not happy with the school's response, so she looks elsewhere for support.

Marta asks her friends for help and searches online. She is looking for extra support for Thomas.



Marta finds advice organisations online that might be able to help with her problem. She contacts them to find out if and how they can help.

🔍 SEN HELP

🔍 SPECIALISTS

🔍 Help with SEN and Schools

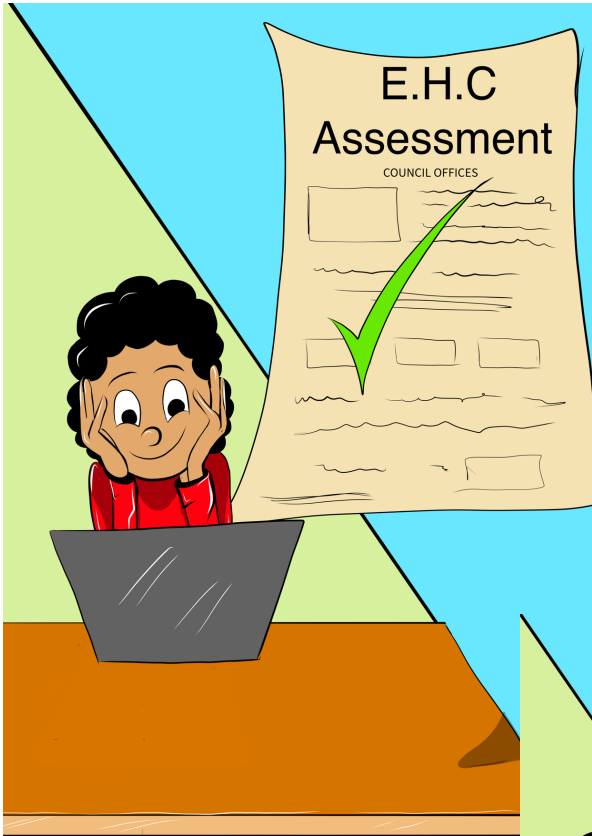


One organisation tells her that Thomas might be entitled to an Education, Health and Care Plan.

An Education Health Care Plan is a document that sets out a child's special educational, health, and social care needs.

The organisation give Marta advice and explain how to apply for an assessment by the local authority.





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Marta asks her local authority to carry out an assessment so that Thomas might receive help at school.

The local authority writes to Marta to say it has decided not to carry out the assessment.

This means that Thomas will not receive the extra help at school that Marta knows he needs.





Marta goes back to the advice organisation for more help. They tell her that she could appeal to the Special Educational Needs and Disability (SEND) Tribunal or try mediation with the local authority first.

In the letter Marta received from the local authority, there are contact details for a local, independent mediation service.

Marta contacts the mediation service to see if they can help.

The mediation service sets up an appointment for Marta with the local authority.



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Unfortunately, the mediator is unsuccessful in helping Marta and the local authority solve their dispute.

Marta is given a mediation certificate.

If Marta now wishes to appeal to the Tribunal she must do so within the deadline – two months from the date of the local authority's letter, or one month from the date of the mediation certificate – whichever is later.



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Marta goes to the HM Courts and Tribunals website and downloads the appeal form.

She fills the form in and posts it to the Tribunal, enclosing the local authority's decision letter and her mediation certificate.





The SEND Tribunal receives Marta's papers and checks they are correct and within the set timeframe.

They write to Marta and the local authority with a timetable for her case and provide a hearing date.

The letter explains that Marta can choose to have a hearing or let the Tribunal take a decision on written evidence only.

Marta decides she would like to have a hearing.

Marta attends the hearing.

There is a two person panel made up of a judge and one other person who knows about children with Special Educational Needs.

A representative from the local authority also attends.

With help of the advice organisation Marta has already explained in her Tribunal hearing application form why she thinks Thomas needs an EHC plan. She can now answer further questions.

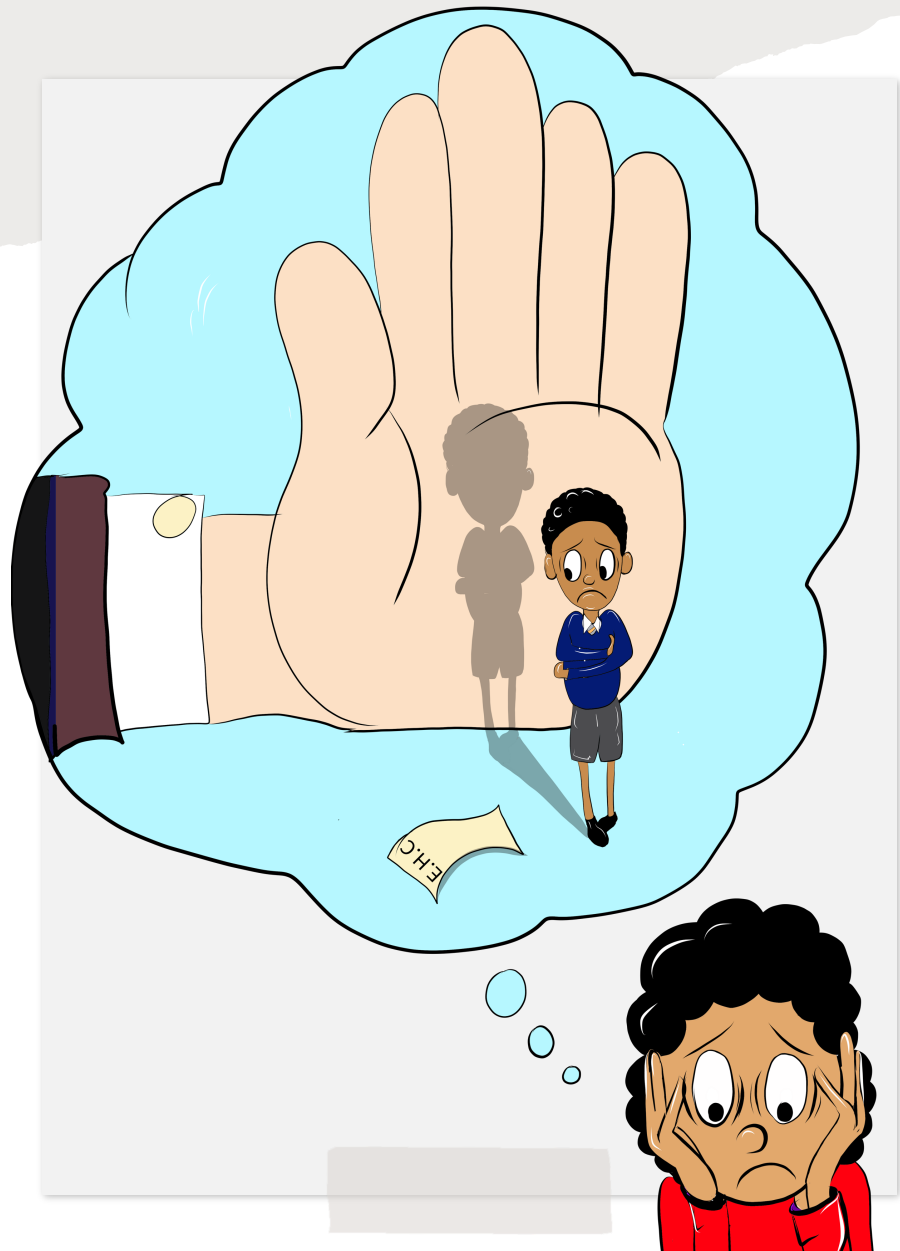




The SEND Tribunal emails Marta and the local authority once they have made their decision.

The SEND Tribunal has agreed with Marta and orders the local authority to carry out an assessment on Thomas.

Once the assessment has been completed, the local authority decides Thomas needs an EHC plan which includes extra support for him at school.



Thomas now has an EHC plan, but Marta doesn't think his school is providing the support set out in the plan.

We will now talk about how the Ombudsman could help Marta with the school not providing Thomas with the right support now he has the EHC plan.







Marta asks for help from the advice organisation she spoke to before.

She is told to make a complaint to the local authority about Thomas' lack of support.



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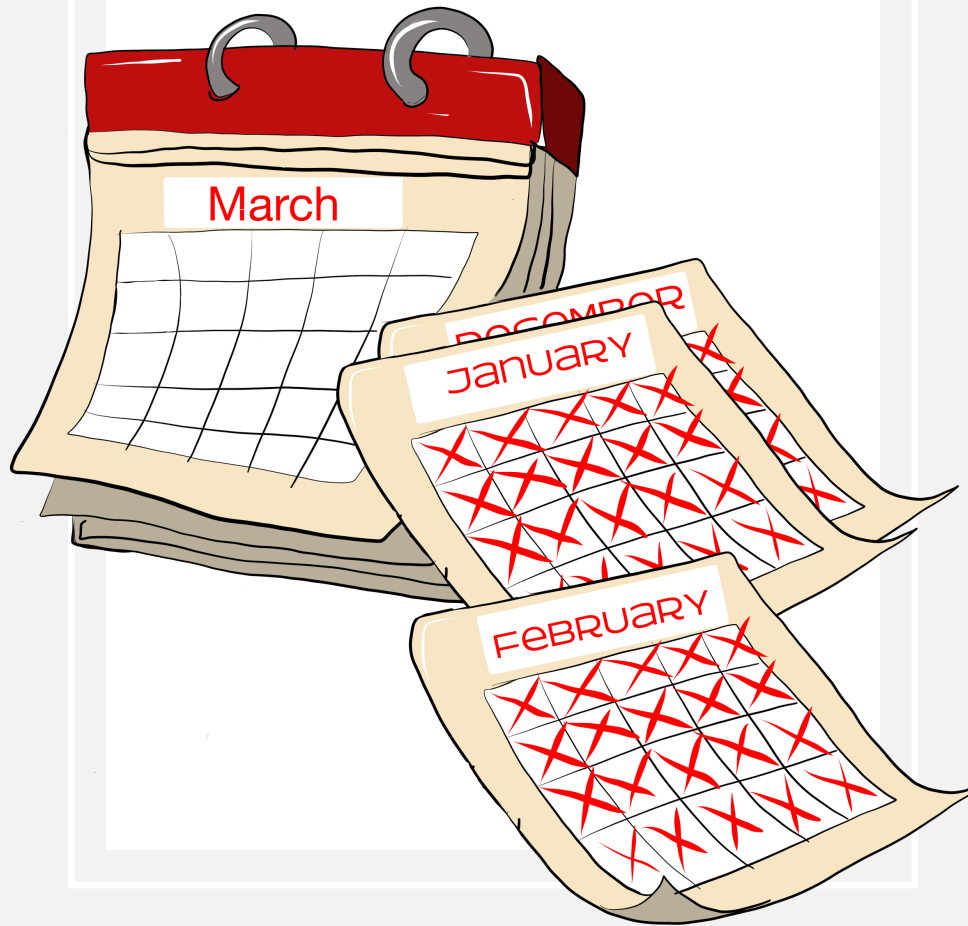
The complaint isn't resolved, so Marta is advised to take her complaint to the Local Government and Social Care Ombudsman (LGSCO).

Marta makes her complaint online through the Local Government and Social Care Ombudsman's website.

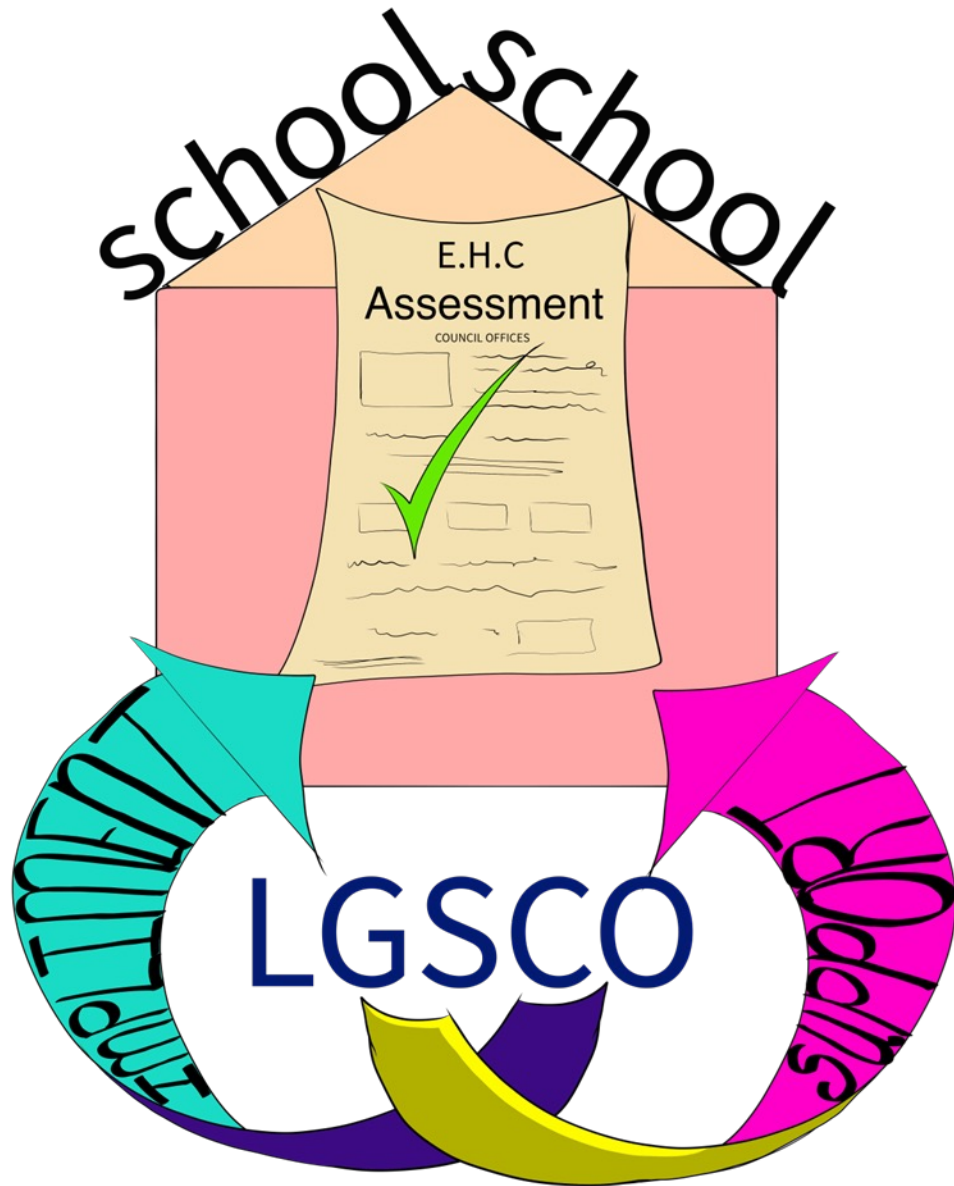




The Ombudsman investigates the issue and asks Marta and the local authority to provide information. The investigator considers the evidence received and gives Marta and the local authority the chance to comment on their initial views about whether the local authority has been at fault and the impact this has had on Thomas.



After a few months, the Ombudsman has made a decision.



It decided that the local authority had not made sure that the school was following Thomas' plan.

And so it recommends that the local authority works with the school to make sure the plan is followed in the future.

The Ombudsman also asked the local authority to make a payment to Marta and Thomas to recognise the provision he has missed out on.



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In this example, Marta was successful. Thomas receives the extra support he needs and is much happier. He is much better supported, able to achieve more and able to fit in with his peers enabling him to thrive at school.

We hope you found this booklet useful in helping you understand the pathways you can take to resolve your problem.

For more information on the research and our outputs, please have a look on the project webpages:

<https://www.nuffieldfoundation.org/project/delivering-administrative-justice-after-the-pandemic>

<https://www.ucl.ac.uk/jill-dando-institute/research/institute-global-city-policing/igcp-research/igcp-delivering-administrative-justice>

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