



COUNCIL CABINET
12 February 2020

ITEM 18

Report sponsor: Andy Smith, Strategic Director of People Services
Report author: Gurmail Nizzer, Director of Commissioning

Local Government and Social Care Ombudsman Report: Complaint Against Derby City Council (Ref. no. 18 015 698)

Purpose

- 1.1 The Local Government and Social Care Ombudsman have concluded an investigation into a complaint made against Derby City Council by a parent of a child with Special Educational Needs. The complaint relates to excessive delays in producing a final Education, Health and Care Plan (EHCP) for the child and the child being out of education for a prolonged period of time.
- 1.2 The Ombudsman investigation relates to a historic case which was complex in nature. Throughout the process, there was input from number of professionals, organisations and panels, including the SEND Team, Education Welfare Service, the child's school, the child's community paediatrician, the SEND Tribunal Panel, and Resource Allocation Panel.
- 1.3 The Local Government and Social Care Ombudsman report will be available to view on its website from 6 February 2020. To view the report, please use the link below:
<https://www.lgo.org.uk/decisions>

As required, the Council will publish a public notice in the local press within two weeks of the Ombudsman report being published.

- 1.4 The key findings of the Ombudsman investigation can be summarised as follows:
EHCP Assessment: The investigation found that there was an excessive delay in the Council completing an EHCP assessment for the child.

It is fully accepted that, for this child, the EHCP assessment process took far too long to complete. Lessons have been learnt and processes have been tightened in an attempt to avoid any such delays in future assessments. Additional training has been provided for the SEND Team on statutory timescales.

- 1.5 **Alternative Education:** The child received no education due to the fault of the Council from October 2016 until September 2018.

Significant attempts were made by professionals to re-engage the child in education and the Education Welfare Service and school both tried to liaise with the parent at home. The school involved an Educational Psychologist. It is, however, accepted that,

additional steps should have been taken to engage with the situation. Some form of alternative education should have been provided. The Council's Children Missing Education Policy has now been updated to specifically cover issues relating to children and young people with SEND. The updated policy was approved by Council Cabinet on 10 October 2018.

- 1.6 The Council must consider the Ombudsman 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.

The following actions, which officers are broadly in agreement with, represent a proportionate response, have been recommended by the Ombudsman, subject to Council Cabinet approval:

- Pay the child £7,200 for being out of education and without SEN provision for approximately 18 months.
- Pay the parent £500 for their distress and time and trouble in pursuing the complaint.
- Pay the parent £675 for the cost of the occupational therapy report.
- Arrange staff training on:
 - a. Statutory timescales for producing EHC plans;
 - b. The need to properly consider all evidence available and give reasons for rejecting evidence provided by parents;
 - c. The statutory duty to provide suitable education when a child is absent from school due to illness, exclusion or otherwise; and
 - d. The need to properly review events in accordance with those statutory duties when a complaint is made.

The Ombudsman has advised that it considers the above actions to be an appropriate remedy to the complaint.

- 1.7 In addition, the following actions have also been completed:

- The Council's Children Missing Education (CME) Policy has been updated and was approved by Council Cabinet on 10 October 2018.
- The Council has undertaken a full review of the complaints process and a new Customer Feedback Policy was approved by Council Cabinet in April 2019.
- An Education Health and Care Plan LEAN Review took place in November 2019, with support from a Department for Education Adviser.
- Updated guidance has been produced for children who cannot attend school for health reasons.

- 1.8 The purpose of this report is to provide an overview of the key findings of the Local Government and Social Care Ombudsman investigation and to set out the lessons learnt. A number of actions have already been taken to improve and strengthen processes in relation to particularly complex cases.

Recommendations

- 2.1 To approve the findings set out in the Local Government and Social Care Ombudsman report and to approve the following recommendations:
- Pay the child £7,200 for being out of education and without SEN provision for approximately 18 months.
 - Pay the parent £500 for their distress and time and trouble in pursuing the complaint.
 - Pay the parent £675 for the cost of the occupational therapy report.
 - Arrange staff training on:
 - a. Statutory timescales for producing EHC plans;
 - b. The need to properly consider all evidence available and give reasons for rejecting evidence provided by parents;
 - c. The statutory duty to provide suitable education when a child is absent from school due to illness, exclusion or otherwise; and
 - d. The need to properly review events in accordance with those statutory duties when a complaint is made.
- 2.2 To approve that the Local Government and Social Care Ombudsman considers the actions set out in paragraph 2.1 (above) to be an appropriate remedy to the complaint.
- 2.3 To note the additional actions that have already been carried out, to strengthen processes.
- 2.4 To note the requirement for full Council to consider the recommendations of Council Cabinet on this matter.

Reason

- 3.1 To provide an overview on the outcome of the Ombudsman investigation into a complaint against Derby City Council by a parent of a child with SEND.
- 3.2 Council Cabinet approval is sought to carry out the recommendations set out in the Ombudsman report.
- 3.3 Additional actions, including a review of the Children Missing Education (CME) Policy and the Council's complaints process, have already been carried out to improve processes.
- 3.4 The Council's Scheme of Delegation sets out the requirement for Council Cabinet to make recommendations to Council on intended action following the receipt of reports from the Local Government Ombudsman (Part B, Para. 6, Scheme of Delegation). Consideration of the recommendations made by Council Cabinet is then required by full Council (Part A, Para. O, Scheme of Delegation).

Supporting information

- 4.1 The Local Government and Social Care Ombudsman have concluded an investigation into a complaint made against Derby City Council by a parent of a child with Special Educational Needs. The complaint relates to excessive delays in producing a final Education, Health and Care Plan (EHCP) for the child, and the child being out of education for a prolonged period of time.
- 4.2 The investigation relates to a historic case that was complex in nature. Throughout the process, there was input from number of professionals, organisations and panels, including the SEND Team, Education Welfare Service, the child's school, the child's community paediatrician, the SEND Tribunal Panel, and Resource Allocation Panel.
- 4.3 The Local Government and Social Care Ombudsman report will be available to view on its website from 6 February 2020. To view the report, please use the link below: <https://www.lgo.org.uk/decisions>

As required, the Council will publish a public notice in the local press within two weeks of the Ombudsman report being published.

- 4.4 The key findings of the Ombudsman investigation are as follows:

Education, Health and Care Plan (EHCP) Assessment

- 4.5 The investigation found that there was an excessive delay in the Council completing the EHCP assessment for the child. The assessment should have been completed by 10 May 2017 but a final EHCP was not issued until 3 April 2018. The Ombudsman report notes that each time the plan was amended, the parent provided comments, which accounted for some of the time taken. The report states that the Council appeared unaware of any time pressures and continued to issue draft plans with no sense of urgency.
- 4.6 It is fully accepted that, for this child, the EHCP assessment process took far too long to complete. It is acknowledged that there were delays in consulting with schools. Lessons have been learnt and processes have been tightened in an attempt to avoid any such delays happening again in future assessments. Each case has its own specific circumstances and this one was particularly complex and challenging. Nevertheless, there were actions that could have been carried out differently at all stages of the process that would have resulted in the plan being issued within more appropriate timescales.

- 4.7 It should be noted that the Council wished to produce a co-produced and agreed EHCP with the parent, and this contributed significantly to the delays. In view of the substantial representations being made by the parent in relation to each draft version of the plan, on balance, a better approach would have been to issue a final draft naming a school or a type of placement within the statutory deadline, with the parent then having a legal right to appeal.
- 4.8 In terms of wider national context, following the SEND reforms in 2014, during 2017-18, the national average for Council's finalising EHCPs in 20 weeks was 58% and there was a focus nationally on converting Statements of SEN to EHCPs.

Alternative Education

- 4.9 The investigation found that the child received no education due to the fault of the Council from October 2016 until September 2018.
- 4.10 The child's school initially took steps to offer some tuition each day with a learning mentor in a separate room to try and re-engage the child in education, but the parent saw this as inadequate. At this stage, the child's community paediatrician advised that the child had not displayed the behaviour described by the parent in the clinic.
- 4.11 The Council proceeded with Court action, given that the view of the community paediatrician was that the child was able to attend school, the parent had refused visits by the Education Welfare Officer, and no other professionals had witnessed the behaviours described by the parent.
- 4.12 Significant attempts were made by professionals to re-engage the child in education and the Education Welfare Service and school both tried to liaise with the parent at home. The school involved an Educational Psychologist. It is, however, fully accepted that additional steps should have been taken to engage with the situation. Some form of alternative education should have been provided, even if temporary, whilst a school was being identified which could best meet the child's special educational needs.
- 4.13 The Council's Children Missing Education (CME) Policy has now been updated to specifically cover issues relating to children and young people with SEND. The policy sets out the responsibilities of schools in relation to non-attendance by children. The updated policy was approved by Council Cabinet on 10 October 2018 and shared with the schools sector.

Local Government and Social Care Ombudsman Recommendations

- 4.14 The Council must consider the Ombudsman 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.

The following actions have been agreed, subject to Council Cabinet approval, and form recommendations in the Ombudsman report:

- Pay the child £7,200 for being out of education and without SEN provision for approximately 18 months.
- Pay the parent £500 for their distress and time and trouble in pursuing the complaint.
- Pay the parent £675 for the cost of the occupational therapy report.
- Arrange staff training on:
 - a. Statutory timescales for producing EHCPs;
 - b. The need to properly consider all evidence available and give reasons for rejecting evidence provided by parents;
 - c. The statutory duty to provide suitable education when a child is absent from school due to illness, exclusion or otherwise; and
 - d. The need to properly review events in accordance with those statutory duties when a complaint is made.

The Ombudsman has advised that it considers the above actions to be an appropriate remedy to the complaint.

4.15 In addition, the following actions have also been completed:

- The Council's Children Missing Education (CME) Policy has now been updated and was approved by Council Cabinet on 10 October 2018.
- The Council has undertaken a full review of the complaints process and a new Customer Feedback Policy was approved by Council cabinet in April 2019.
- An Education Health and Care Plan LEAN Review took place in November 2019, with support from a Department for Education Adviser.
- Updated guidance has been produced for children who cannot attend school for health reasons.

4.16 The purpose of this report is to provide an overview of the key findings of the Local Government and Social Care Ombudsman investigation and to set out the lessons learnt. A range of actions have already been taken to improve and strengthen processes in relation to particularly complex cases.

Public/stakeholder engagement

5.1 As required, the Council will publish a public notice in the local press within two weeks of the Ombudsman report being published. The Council must not disclose any information that could identify the complainant or other individuals referred to in the report.

Other options

6.1 None.

Financial and value for money issues

7.1 Subject to Council Cabinet approval, the following payments, which form recommendations in the Ombudsman report, will be made:

- £7,200 to the child for being out of education and without SEN provision for approximately 18 months.
- £500 to the parent for their distress and time and trouble in pursuing the complaint.
- £675 to the parent for the cost of the occupational therapy report.

7.2 In terms of wider financial context, nationally there are significant pressures on high needs funding. On 3 May 2019, the Department for Education (DfE) launched a 'call for evidence' on funding arrangements for children and young people with SEND. The call for evidence was in response to the many representations received by the DfE on the adequacy of funding for special needs provision. The Association of Directors of Children's Services responded to the Government's call for evidence covering a range of issues relating to the SEND reforms and high needs funding.

Legal implications

8.1 Part 3 of the Children and Families Act 2014 places legal duties on Local Authorities to identify and assess the special educational needs of children and young people for whom they are responsible. LAs become responsible for a child/young person in their area when they become aware that the child/young person has or may have SEN. They must then ensure that those children and young people receive a level of support which will help them “achieve the best possible educational and other outcomes”.

8.2 The Council's Scheme of Delegation sets out the requirement for Council Cabinet to make recommendations to Council on intended action following the receipt of reports from the Local Government Ombudsman (Part B, Para. 6, Scheme of Delegation). Consideration of the recommendations made by Council Cabinet is then required by full Council (Part A, Para. O, Scheme of Delegation).

Other significant implications

9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	23/12/19
Finance	Alison Parkin, Head of Finance – People Services	07/01/20
Service Director(s)	Gurmail Nizzer, Service Director for Commissioning	10/01/20
	Suanne Lim, Service Director for Early Help and Children's Social Care	20/12/19
	Pauline Anderson, Service Director for Learning and Skills	21/12/19
Report sponsor	Andy Smith, Strategic Director of People Services	09/01/20
Other(s)	Liz Moore, Head of HR	20/12/19

Background papers:	None
List of appendices:	None

