

COUNCIL CABINET 12 February 2020

Minute Extract

149/19 Local Government and Social Care Ombudsman Report Complaint Against Derby City Council (Ref No 18 015 698)

The Council Cabinet considered a report which stated that The Local Government and Social Care Ombudsman had concluded an investigation into a complaint made against Derby City Council by a parent of a child with Special Educational Needs. The complaint related 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.

The Ombudsman investigation related 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.

The Local Government and Social Care Ombudsman report had been available to view on its website from 6 February 2020. As required, the Council would publish a public notice in the local press within two weeks of the Ombudsman report being published.

The key findings of the Ombudsman investigation could 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 was fully accepted that, for this child, the EHCP assessment process took far too long to complete. Lessons had been learnt and processes had been tightened in an attempt to avoid any such delays in future assessments. Additional training had been provided for the SEND Team on statutory timescales.

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 was, 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 had 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.

The Council must consider the Ombudsman report and confirm, within three months, the action it had taken or proposed 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 were broadly in agreement with, represent a proportionate response, had 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 had advised that it considered the above actions to be an appropriate remedy to the complaint.

In addition, the following actions had also been completed:

- The Council's Children Missing Education (CME) Policy had been updated and was approved by Council Cabinet on 10 October 2018.
- The Council had 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 had been produced for children who could not attend school for health reasons.

The purpose of the report was 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 had already been taken to improve and strengthen processes in relation to particularly complex cases.

The Executive Scrutiny Board noted the report.

Decision

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 was 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. To approve that the Local Government and Social Care Ombudsman considers the actions set out to be an appropriate remedy to the complaint.
 3. To note the additional actions that had already been carried out, to strengthen processes.
 4. To note the requirement for full Council to consider the recommendations of Council Cabinet on this matter.

MINUTES END