

Divisions Affected - ALL

EDUCATION & YOUNG PEOPLE OVERVIEW AND SCRUTINY COMMITTEE – 13 June 2025

Education Act 1996 (Section 19) – Response to Local Government Ombudsman's Report

Report by Lisa Lyons, Director of Children's Services

RECOMMENDATION

1. **The Education and Young People Overview and Scrutiny Committee is RECOMMENDED to**
 - a) Acknowledge the requirements of DfE Statutory Guidance and the learning from complaints to the Council relating to section 19 provision.
 - b) Support the process of developing the local authority's Section 19 Policy and Pathway of Action to manage applications for provision following 15 days of school absence.
 - c) Monitor the response to the February 2025 improvement request from the Local Government Ombudsman and bring back a monitoring report to Scrutiny in early 2026.

Executive Summary

2. In February 2025, Oxfordshire County Council received the following directive from the Local Government Ombudsman:
'Within six months of our final decision the Council will review thirteen cases in the past two years where we found fault with its section 19 duty to provide alternative education to a child out of school. It will: a) produce a dated action plan of how it will avoid recurrence of the same faults by making changes to practice and procedure or staff training; and Final decision b) report this review outcome and action plan to its relevant scrutiny and oversight committee, so it can decide how progress against the plan should be monitored. C). The Council will provide us with evidence it has complied with the above actions'
3. Immediate action was taken in February 2025 to review the 13 complaints upheld by the Ombudsman in relation to the Council's failure to make alternative provision for pupils who had missed more than 15 days of

education. Most cases came under the category of Health Needs, citing mental health and well-being as the reason for prolonged non-attendance. Many of the cases were linked to delays in SEND assessment and the provision of EHCPs.

4. Since February 2025, an action plan has been in place to address the issues made manifest by the case reviews. (Attached as Annex A).

Section 19 Requirements for Pupils with Health Needs

5. The Statutory Guidance for the arrangement of education for children who cannot attend school appears in the following legislation:
 - (a) Section 19 of the Education Act 1996
 - (b) Education (Pupil Registration) (England) Regulations 2006
 - (c) Equality Act 2010
 - (d) Section 100 of the Children and Families Act 2014
 - (e) Arranging alternative provision: a Guide for Local Authorities and Schools (Department for Education, February 2025)
 - (f) Arranging Education for Children who Cannot attend school because of health needs (Department for Education, December 2023)
6. The statutory duty known as 'Section 19 Provision' covers a broad spectrum of arrangements for alternative education. The focus of this report is the provision for pupils with Health Needs detailed in the 2023 publication ['Arranging Education for Children Who Cannot Attend School Because of Health Needs'](#) and, in particular, those whose non attendance is related to their mental health and well-being. Another helpful document demonstrating the application of the law is ['Out of School, Out of Sight'](#) However, it is worth noting that case law suggests that there is a broad and differing interpretation of the duty by parents, professionals and the Ombudsman. Other local authorities are also reviewing their Section 19 provision in the light of case law and other advice since this is a complex area of policy and legislation.
7. The responsibilities for schools and local authorities complement each other. School governing bodies are responsible for arranging full time education from the sixth (or earlier) school day of a suspension for any child of compulsory school age, whilst the local authority has a duty to arrange suitable and (normally) full-time provision for children of compulsory school age who, because of exclusion, illness or other reasons, would not receive suitable education without such provision being arranged.
8. Literal interpretation of the duty indicates that after a pupil is absent from school for 15 days, the Local Authority is obliged to consider the use of alternative education provision to ensure continued engagement with learning. Parents can request provision directly from the Local Authority, although 'technically' there is no such thing as a 'request'. In essence, parents are raising with the local authority it's duty to provide education. There are often

complex and challenging circumstances surrounding the delivery of this duty. Examples of complexities present in the 13 Oxfordshire cases include:

- Children remaining at home beyond 15 days. Parents claiming the child is unable to co-operate with the adjustments to provision being offered by the school and submitting a 'request' for section 19 directly to the Council.
- Schools and Local Authority Officers delaying prosecution for non-attendance in an effort to work with the family to restore engagement in learning.
- Schools trying out various support strategies beyond 15 days to keep children learning and encourage them into school before considering alternative provision.
- Schools and Local Authority officers taking time to assess the nature of the absence and whether parents/ carers are contributing negatively to the prolonged non-attendance or whether there is evidence of health-related school avoidance (also known as Emotionally Based School Avoidance – EBSA).
- Overlapping roles between the school and the Local Authority in terms of the duty to educate and the need for pupils to remain on the roll of the school.
- Pupils genuinely experiencing anxiety-related school avoidance exacerbated by prolonged absence.
- Lack of evidence of Mental Health needs warranting Section 19 intervention.
- Schools having to be challenged by the Council to fund alternative education provision since the school's budget contains a notional £6k per pupil to support those with SEND but without an EHCP.
- Confusion amongst schools, Local Authority staff and parents as to what the duty involves and how provision should be funded.

Learning from Complaints in Oxfordshire

9. Between December 2022 and February 2025 Oxfordshire County Council was found at fault by the Local Government Ombudsman in 13 separate complaints cases of failure to manage prolonged school absences in line with the section 19 duty. The majority of these cases were also linked to delayed SEND assessments and time lapses in issuing EHCPs.
10. In February 2025 the Ombudsman required OCC to write an action plan for improvement and report the subsequent learning and progress to the Overview and Scrutiny Committee. The Action Plan is attached as Annex A.
11. There are common themes in the 13 cases in question in terms of children who are waiting for a Special Educational Needs assessment or waiting for an EHCP to be issued. These include:
 - Delays in the EHCP process contributed, in most cases, to stress and anxiety for the child/young person resulting in prolonged school absence where section 19 provision should have been applicable under the Medical Needs duty.

- In all cases OCC demonstrated confusion about the obligation to arrange and fund alternative education provision.
 - The findings of the Ombudsman in the cases where there was fault indicate that the Council should have responded to absences longer than 15 days by moving quickly either to fund alternative education provision or to prosecute for non-attendance.
 - The Council response to stage 1 and 2 complaints from parents demonstrated differences in understanding and interpretation of the section 19 duty. In all 13 cases the Ombudsman found fault.
 - The absence of a clear policy and pathway of action from Oxfordshire contributed to misinterpretation of the statutory duty.
12. It is clear from the review of the 13 cases from the Ombudsman and from similar complaints to the Council, that more accurate consideration of the statutory duty is needed on a case-by-case basis, supported by a clear documentation.

Summary of Actions to Date

13. The detail of actions and progress are contained in the enclosed action plan Annex A.

The main improvements include:

- Securing additional capacity to enable an interim appointment of a Section 19 officer.
- Drafting a revised Section 19 Medical Needs Policy and Pathway of Action which is currently subject to consultation with stakeholders.
- Training staff who are likely to be involved in intervention. Increase awareness and understanding of their legal responsibilities resulting in appropriate advice and action.
- Ensuring the Council has a clear process for managing Section 19 interventions, including via parental 'requests', allocating High Needs funding to support Alternative Education Provision where necessary. (A draft process is attached as Annex B)
- Revising the approach to working with schools to act swiftly to re-engage learners who are unable to attend school due to anxiety and mental health needs.
- Agreeing Alternative Education Provision and funding arrangements with schools, regardless of the existence of an EHCP, if the absence meets OCC published criteria for Section 19 intervention.
- Supporting the plans already in place via the Send Improvement Board to improve the timeliness of SEND assessments and the issuing of EHCPs.

The action plan is attached as Annex A.

Improved Outcomes

14. In the first quarter of 2025, 15 'requests' were made under the S.19 duty. In quarter 2, 12 new 'requests' have been received although this is for two months only.
15. Training was delivered to 42 staff in March 2025. Further training is planned for June and September.
16. New arrangements are in place to receive and deal with requests for Alternative Provision for students unable to attend school due to anxiety and mental health needs in order to re-engage them with learning.

Future Monitoring and Performance Management

17. Ongoing monitoring of improvements will be overseen by the Children Education and Families Directorate Leadership Team and reported to Scrutiny as appropriate. A formal monitoring report on progress will be submitted to Scrutiny in early 2026.
18. SEND Improvements are reported regularly to the improvement board, the DfE and Ofsted and part of ongoing dialogue and due process.

Financial Implications

19. The introduction of an interim Section 19 officer will temporarily increase the cost of this service; however, these costs are being managed with the overall existing staffing budget for the Education service.
20. The actions set out in this report suggest that this could result in a change in the financial position for the council in relation to the cost of alternative provision. However, at this stage it is not possible to accurately estimate what this will be and will likely vary from case to case. For example, in some cases a quicker decision may result in support being funded over a longer period than at present resulting in increased total spend, but in other cases it may result in earlier intervention creating a different outcome and lower total costs for some young people.
21. The council's Section 19 duties are funded from the High Needs Block of the Dedicated Schools Grant. It should be noted that the council currently has an annual and accumulated deficit against the grant and any change in spend will impact on this accordingly.

Comments checked by:

Thomas James, Head of Financial Services,
thomas.james@oxfordshire.gov.uk (Finance)

Legal Implications

22. Section 19 statutory guidance is covered by:
Department for Education (2025): Arranging alternative provision a guide for local authorities and schools
Department for Education (2023): Arranging education for children who cannot attend school

Our response to the Ombudsman report has been grounded in this guidance alongside the Local Government Ombudsman report (2022): Out of School, Out of Sight

Comments checked by:

Leanne Schrouder, Locum SEN and Education Solicitor,
Leanne.Schrouder@oxfordshire.gov.uk

Staff Implications

23. Training for staff on the Section 19 duty is already underway. Any changes to the staffing structure to support improvements, will be captured as part of the wider realignment of the education service.

Michelle Higgs, HR Business Partner (Schools and Education),
Michelle.Higgs@Oxfordshire.gov.uk

Equality & Inclusion Implications

24. The ability to provide access to appropriate education provision is a cornerstone of equality and inclusion legislation. Enabling an effective Section 19 service is central to the work to improve inclusion across the education system.

Sustainability Implications

25. None.

Risk Management

26. The local authority acted swiftly once the Ombudsman's advice was received. This has mitigated the risk to the local authority and will lead to improvements in outcomes for children and young people.

Consultations

27. None.

Lisa Lyons

Annex A: Section 19 Action Plan
Annex B: Section 19 process flowchart

Background papers: Nil

Contact Officer: Kate Reynolds, Deputy Director of Education & Inclusion,
Kate.Reynolds@oxfordshire.gov.uk

May 2025