

Divisions Affected - ALL

CABINET COMMITTEE

20 December 2022

Report findings by the Local Government and Social Care Ombudsman

Report by Corporate Director of Children's Services

RECOMMENDATION

The Cabinet is RECOMMENDED to note the contents of the report by the Local Government and Social Care Ombudsman (LGO) as in Annex 1 and to endorse the actions completed and undertaken in response by this council.

Executive Summary

1. This report invites Cabinet Members to consider the findings of the Local Government and Social Care Ombudsman's (LGO) report (Annex 1) pertaining to resident Miss X's complaint that the Council:
 - a) failed to make alternative provision for her son, Y, when he was unable to attend school due to anxiety caused by the school not meeting his needs;
 - b) delayed in completing an education, health and care plan needs assessment; and
 - c) delayed in dealing with her complaints about the Council's failure to make alternative provision and delay in completing the needs assessment.
2. As the LGO has found Miss X has suffered injustice as a result of fault, under Section 31(2) of the Local Government Act 1974, the Cabinet must formally consider the LGO's report. The Council is obliged to publish this report and undertake required actions to satisfy the Ombudsman. The Council has already undertaken several of these actions. The national context to the series of events described in the report is detailed below.
3. There is no exempt Information in this report.

Background

4. Miss X complained that the Council:
 - a) failed to make alternative provision for her son, Y, when he was unable to attend school due to anxiety caused by the school not meeting his needs;
 - b) delayed in completing an education, health and care plan needs assessment; and

- c) delayed in dealing with her complaints about the Council's failure to make alternative provision and delay in completing the needs assessment.
5. The Ombudsman has determined that Oxfordshire County Council send a written apology to Miss X for the distress caused to her and her son Y by not making suitable alternative provision for him and for the delay in issuing a final education, health and care plan;
- a) pay Miss X £1,600 on behalf of Y to acknowledge he did not receive full-time suitable education between June 2021 and February 2022;
 - b) pay Miss X £2,400 on behalf of Y to acknowledge he has not received any educational provision between February and 26 June 2022;
 - c) pay Miss X £1,000 to acknowledge the distress, avoidable time and trouble and impact on her ability to work caused by the Council's failure to provide suitable alternative provision to Y;
 - d) pay Miss X £2,200 to reimburse the cost of the educational psychologist assessment which she commissioned;

Action taken: A written letter of apology has been sent to Miss X, with arrangements for the payment of the sums sets out by the Ombudsman above.

- e) by training or other means, ensure officers are aware of the Council's duty under section 19 of the Education Act 1996 to provide suitable education to children unable to attend school and the factors they should consider when deciding whether alternative provision should be made; and

Action taken: Oxfordshire County Council has briefed schools in the county on section 19 duties through the weekly (now fortnightly) Head Teachers' remote meeting. This briefing has also been shared at the Head Teachers and Chairs of Governors sessions. Training of Social Workers and Early Help Workers has included section 19 duties. Reminders have been posted in the weekly Schools News publication which has a distribution of in excess of 3,000 recipients. The SEN Casework Team has also received a briefing on section 19 duties and it has been included as part of new Officer induction and ongoing CPD.

- f) ensure it has procedures for tracking pupils who require alternative provision, including for absences other than for medical reasons, to ensure that provision is regularly reviewed to meet their education and special educational needs.

Action taken: Oxfordshire County Council has invested in a new Information Management system (Liquid Logic EYES). This affords the opportunity to receive twice daily live attendance information for each enrolled pupil from each school, thereby allowing for identification of medical/illness absence from day 15. The system was launched in August 2022. The report will be available by January 31st 2023.

- 6. The Council has fully complied with the first two points set out in 4. above, has partially completed the final point with full completion by end January 2023.
- 7. The Ombudsman has investigated and written a report on section 19 failings across England titled [Out of School, Out of Sight](#) in July 2022. The Department for Education, following lobbying from national and regional groups of local authorities,

is aware that the current section 19 duty is due for review in light of changing residents' needs and fiscal envelopes. The impact of academy schools being independent of local authorities in terms of information exchange pertaining to vulnerable pupils may be considered a dimension relevant to Child Y's experience.

8. For the education, health and needs assessment, the Council did depart from the statutory timescales to gather advice and complete the process; this has been acknowledged in all correspondence about the complaint. There is a national shortage of, among other professionals, Educational Psychologists (see Background Papers for more information). Given increased demand for education, health and needs assessments in Oxfordshire and the lack of capacity in the Educational Psychology Service locally, the Council commissioned external resource and this case was referred for assessment in October 2021. The assessment report was received on 18th January 2022.

Corporate Policies and Priorities

9. The Oxfordshire County Council [occ medical needs policy \(oxfordshire.gov.uk\)](https://www.oxfordshire.gov.uk/occ/medical-needs-policy) is current, regularly reviewed and available to all schools in the county. The policy reflects Oxfordshire County Council's strategic priorities
 - a) Create opportunities for children and young people to reach their full potential.
 - b) Tackle inequalities in Oxfordshire.
 - c) Prioritise the health and wellbeing of residents.

Financial Implications

10. Miss X and child Y will receive a total of £7,200 as instructed by the Ombudsman.

Comments checked by: Sarah Fogden, Finance Business Partner (Children),
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Legal Implications

11. Since the LGO has found Miss X has suffered injustice as a result of fault, under Section 31(2) of the Local Government Act 1974, the Cabinet as the appropriate decision-making body within the Council must formally consider the LGO's report within three months of receiving it. By virtue of this Cabinet Report the Council is providing evidence of considering the LGO's report within that three-month period and following the LGO's recommendations. The Council has explained in the Cabinet Report against each of the LGO's recommendations what action it has taken or proposes to take.
12. The recommendations from the LGO have been proposed after the LGO's consideration of the Council's representations and evidence and it is set out in this report to Cabinet that the LGO's recommendations are accepted by the Council.

13. The Council has to confirm to the LGO within 3 months the actions which it has taken following the recommendations in the LGO's report and this legal duty must be complied with.

Comments checked by: Anita Bradley, Director of Law & Governance
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Background papers

- Policy is not keeping pace with practice especially post Covid when schools re using a range of options to support and reintegrate pupils. AEWMM (Association of Education Welfare Managers) April 2022
- The capacity of LA teams to fulfill the guidance requirements is a challenge, a number report increasing numbers of parents seeking bespoke package of home learning for their child with expectation being raised by LG Ombudsman and social media. SESLIP (South East Sector Led Improvement Programme) November 2022
- DfE report March 2019 '[Research on the Educational Psychologist Workforce](#)'

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Annexes: Annex 1 – Report of the Local Government and Social
Care Ombudsman