

Divisions Affected - ALL

CABINET

19 September 2023

Report findings by the Local Government and Social Care Ombudsman (LGSCO)

Report by Corporate Director of Children's Services

RECOMMENDATION

1. The Cabinet is RECOMMENDED to:

- i) Note the findings of the Ombudsman's investigation;
- ii) Note the procedures when consulting for new education placements for children with Education, Health, and Care plans; and to
- iii) Consider whether additional actions are presently needed to improve the timely completion of Education, Health, and Care plans.

Executive Summary

2. This report invites Cabinet Members to consider the findings of the Local Government & Social Care Ombudsman's report (Appendix 1 – LGSCO – The Ombudsman's final decision) pertaining to resident Mr and Mrs X's complaint that the Council:
 - Communication from the Special Educational Needs & Disabilities (SEND) Service was poor.
 - Delayed amending the Education, Health & Care (EHC) Plan following the Annual Review.
 - Did not secure appropriate specialist educational provision for child Y.
3. Y had been attending mainstream school; however, the school reached a point where they felt they were unable to meet need. A lack of partnership working by the service with the school resulted in a delay and Y had a period out of education. finding an alternative school place.
4. There were no places available within maintained special schools in Oxfordshire, and child Y was placed in an Independent Non-Maintained Special School for young people with Autism Spectrum Disorder (ASD) and Social Emotional and Mental Health Needs (SEMH).
5. Following their investigation, the LGSCO recommended that the Council:

- Write to Mr and Mrs X and to Y and apologise for the injustice caused to them by the Council's faults;
 - pay Mr and Mrs X £300 to recognise the distress and frustration caused to them by the poor communication and the delayed appeal rights to the SEND tribunal; and
 - pay Mr and Mrs X £4,000 to recognise the injustice caused to Y by the delay in issuing the amended EHC Plan, and to recognise the lost special educational provision over the two terms between February and November 2022.
6. Additionally, within three months of the decision (i.e. before 30th September 2023) the Council agreed to review its procedures when consulting with new education placements for children with EHC Plans to ensure its staff were consulting early enough and with sufficient providers to prevent unnecessary delays in children accessing a new education placement.
7. The Council also agreed to:
- Remind all its SEN staff that it is the Council's duty to ensure children receive the provision set out in their EHC Plans and secure an appropriate education under section 19 of the Education Act;
 - that those duties cannot be delegated to a school or other body; and to
 - discuss the findings of the investigation at an appropriate committee or cabinet meeting.
8. This report outlines the response taken by the Council to address the recommendations of the Ombudsman.

Background

9. During February to November 2022, the period covering the complaint, the SEN Casework Team had significant workforce capacity issues, and this meant Mr and Mrs X and Y had had three changes of SEN Officer during this time.
10. The lack of continuity of SEN Officer, led to poor communication from the SEN Officer to the family and a fragmented delivery of service.
11. Subsequently, there has been considerable work undertaken to improve staffing levels and the retention of staff within the team.
12. There was also a delay in amending the EHC Plan, with the statutory timescale for completing the Annual Review missed. The delay in meeting statutory timescales was compounded by the migration to a new Information Management System (Liquid Logic) which was introduced in September 2022.

Service Improvement and Remedial Actions

13. There is now in place an established service improvement regime which has arisen from a strategic overhaul of the issues with meeting statutory timeframes within the Education Health and Care Needs Assessment and Review process.
 - 13.1 The service has used Team Meetings to deliver training that highlights the duty under Section 19 of the Education Act 1996 (Section 19 of the Act). Section 19 of the Act states the local authorities shall make arrangements for the provision of suitable education at school, or otherwise than at school, for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
 - 13.2 An Oxfordshire SEND Sufficiency Service Delivery Strategy 22/23 - 26/27 is in place which outlines the plan for building additional school place capacity in County, to meet demand, thereby reducing the number of children and young people with SEND who are placed out of County.
 - 13.3 The SEN Casework Team has also been re-configured and expanded with the addition of a Tribunal, Resolution and Complaints Team. This team has been created to deal with complex cases, thereby ensuring that there are manageable caseloads with increased focus on targeted review work.
14. An EHC Assessment Monitoring Tracker has been introduced managed by the Service Manager, Senior Leads and Team Managers. The tracker gives managers and officers careful oversight of all new assessments, and this has resulted in an increase in completion rates of EHC Plans within statutory timescales. Evidence of this can be seen in the performance of the team and completion of EHC Plans within the statutory timescales from 4% to 43% (rolling year January to July 2023).
15. The SEN Team is currently being reconfigured with additional staffing capacity and the new workforce will be in place at the beginning of the Autumn Term 2023. This will support SEN Officers to be able to undertake Annual Reviews within timescales.
16. An Annual Review Monitoring Tracker and performance data set is being built, similar to that for the reporting of the completion of EHCP 20-week process. This will be implemented in the Autumn Term 2023. This will monitor the timeliness and completion of EHC Assessment and Review Plan processes.
17. A recommendation from the LGSCO investigation was that the service would review its procedures when consulting for new education placements for children with EHC Plans to ensure its staff are consulting early enough and with sufficient providers to prevent unnecessary delays in children accessing a new education placement.
 - 17.1 To address this recommendation, the SEND Team Manager issued a briefing to all SEN teams reminding staff of the Council's duty to ensure children receive the provision set out in their EHC Plans and to secure an appropriate education under section 19 of the Education Act.

17.2 New standard operating procedures to address section 19 of the Education Act, have been co-produced by all teams with the involvement of children not accessing education, and these have been rolled out within the department.

Current Situation

18. The service has apologised to Mr and Mrs X and Y and issued compensation of £4,300. An Annual Review has been undertaken, the EHC Plan has been amended and child Y now has a new school placement.
19. Systems have now been put in place to ensure that there are no delays for other children and young people in the completion of their EHC Plan processes.
- 19.1 As stated above, the service has improved the timeliness of completion of EHC Plans within the statutory timescales to 43% (rolling year January to July 2023), and our target is to reach 50.7% in line with the national average (rolling year January to December 2023).
- 19.2 We will continue to monitor EHCP timeliness performance, and will take further action as necessary, alongside our health partners, to support staff to reach target performance.
20. As part of whole team training, both operational and business support, we have looked at communication expectations in February 2023 (further revised in June 2023) and have revised expectations across the whole team in relation to the service provided to parents/carers and settings. The expectation is that staff will acknowledge receipt of any queries within 48 hours and send a full response within five working days.
21. In January 2023, there were 73 outstanding formal complaints (several of which exceeded the expected timeframe for response), and currently (23rd August 2023) there are only three live open formal complaints – none of which are exceeding timeframes.
22. The availability of school provision is impacted by wider issues around suitable specialist provision for children and young people with additional needs - the Oxfordshire SEND Sufficiency Delivery Strategy sets out the plan for delivery of additional specialist provision in County over the next five years.
23. In conclusion, the improvement and remedial actions outlined in this report are expected to:
- Improve the timeliness to finalise Education, Health, & Care Plans;
 - improve communication with families; and
 - support children to have a suitable education.

Financial Implications

24. The financial implications are set out in the report. The £4,300 cost is being met from within the Education budget.

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Legal Implications

25. The local authority has the statutory duty to consider the LGSCO's report, and the local authority must notify the LGSCO within three months of receiving the final report (or such longer period the LGSCO may agree in writing) of the action which the local authority has taken or proposes to take (see section 31 (2) of the Local Government Act 1974); and although the LGSCO's recommendations are not legally enforceable, it would be extremely unusual for a local authority not to accept them. Therefore it is generally accepted as good practice that a local authority should follow the recommendations of the LGSCO, who has the role of an independent arbiter between local authorities and complainants. Failure to comply with recommendations of the LGSCO could lead to further adverse publicity and reputational risk.
26. Since the local authority received the LGSCO Report, it has followed the recommendations and actions along with implementing new measures which are reflected within the Informal Cabinet Report.

Equality & Inclusion Implications

27. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The recommendations from the LGSCO are a proportionate response in recognition of the failings identified.

Sustainability Implications

28. None identified.

Risk Management

29. Due to the vulnerable nature of the directly impacted group, there is a risk of reputational damage for the council.

Background papers

Appendix 1 - LGSCO – Ombudsman's final decision

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22 August 2023

Appendix 1 – LGSCO – Ombudsman's final decision [hyperlink to be added]

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