

EDUCATION SCRUTINY COMMITTEE – 20 NOVEMBER 2019

REPORT BY THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN - INVESTIGATION INTO A COMPLAINT AGAINST OXFORDSHIRE COUNTY COUNCIL (REFERENCE NUMBER: 18 009 005) - OUTCOMES OF REQUIRED AUDITS

Report by Director for Children's Services

RECOMMENDATION

The Committee is RECOMMENDED to

- a) note the barriers to an efficient system of tracking and placing CME and request that Cabinet make representations at national political level to ensure academies comply with the terms of their funding agreements in a timely manner and that the Secretary of State for Education be given powers to enforce this;
- b) note the actions undertaken from both LGO rulings in 2019 in respect of CME with medical needs and confirm they are satisfied effective arrangements have been put in place to avoid similar circumstances occurring again;
- c) note the audit of pupils following referral to FAPs in the period required and that all pupils have been placed and their whereabouts are known;
- d) note the audit of all pupils that may be classified as CME in the period required and that all reasonable efforts have been made to satisfy the Council that these pupils are not or no longer CME; and
- e) confirm that the Council has met the terms of the LGO ruling and that this should be reported to that office.

Executive Summary

1. The Local Government and Social Care Ombudsman (LGO) has issued a report following its investigation of a complaint against Oxfordshire County Council. The complaint was about an Education & Children's Services matter. The LGO found that there had been fault on the part of the council where Mr and Mrs X had complained their daughter The Child D had not been provided with a suitable education when unable to attend school for medical reasons and this had caused injustice to the complainants.
2. The council has agreed to take action which the LGO regards as providing a satisfactory remedy for the complaint. It must now consider the report

(attached at Annex 1) and tell the LGO within three months (or such longer period as the LGO may agree) what it proposes to do.

3. The finding is 'Report issued: upheld; maladministration and injustice'.
4. In law, Cabinet must consider this report and evidence of its consideration must be reported to the LGO. (Local Government Act 1974, section 31(2), as amended). Cabinet considered this report at its meeting on 17th September 2019. It noted the contents of the report by the LGO and endorsed the actions undertaken in response by this Council. The findings of the required audit were also required to be reported to the Education Scrutiny Committee at its meeting on 20th November together with advice about whether the Council is complying with its statutory duties and has made the service changes found in a previous LGO investigation.
5. The LGO welcomed the work the Council has already carried out, and has planned, to address the fault identified in this and our previous investigation. This is satisfactory to address the service failures identified.
6. Recommendations of the LGO are set out under two categories; those to address the injustice caused to Mr and Mrs X and Child D; and those to address the injustice that may have been caused to others.
7. The Council agreed to carry out, within four months, an audit of children missing from education from September 2016 to December 2018 for whom it has a statutory duty to provide suitable full-time education under section 19 Education Act 1996 to identify:
 - a) the number of children brought to its attention by schools/academies as missing education;
 - b) the outcome for each child in terms of provision of education. This should include the amount of time each child was out of school and the level of alternative education they received;
 - c) whether any child was refused a referral to School H because they were not on roll at another school;
 - d) the number of occasions the Council did not name a school after a Fair Access Panel failed to place a child.
8. Both sets of recommendations are in hand and the outcomes of the latter are required to be reported to Education Scrutiny Committee at its meeting on 20th November 2019.

Actions completed following both recent cases involving a child seeking admission to Oxfordshire Hospital School.

9. Since the events of 2017 and early 2018, the county council has adapted several of its processes to ensure this series of events cannot happen again.

- (a) The Fair Access Protocol (FAP) has been revised and is operational in the revised form from April 2019 and is available here <https://www.oxfordshire.gov.uk/sites/default/files/file/school-transfers/DeterminedFairAccessProtocol.pdf>
The document is to be reviewed again for at least six weeks between 1st October and 31st January 2020 excluding school holidays to assess whether the revised protocols are effective and identify any additional changes required to make this as fair and effective as possible in supporting the council in carrying out its' statutory duties.
- (b) There have been regular weekly meetings between Admissions Officers and Children Missing Education (CME) Officers, since January 2019.
- (c) A full audit of offers accepted and admission to school rolls through the main admissions rounds has been completed to ensure no CME are missed at this key transition point at October 2019.
- (d) Transition of F1 pupils in places funded by the council in both Schools and private, voluntary and independent settings to Reception year is tracked. All settings are required to confirm the destination of Reception age children whether accessing places in Oxfordshire or out of county.
- (e) The Service Level Agreement between the Hospital School and OCC has been re-written to accommodate medically unfit children that are not on a school roll.
- (f) Funding of the Hospital School, that currently requires schools to pay for this provision for their medically unfit pupils, is scheduled for review to ensure OCC is complying with its statutory duties. This review commenced in June 2019. The schools related element of the overall funding formula exists because schools automatically receive per pupil funding for each pupil admitted to the school roll. It is this funding which is required to be transferred to the Hospital School when the pupil is transferred temporarily to that provision for education purposes.
- (g) Transformation of Education Services will offer an opportunity to ensure synergies between Admissions, Fair Access and Children Missing Education are more closely aligned.
- (h) Learner Engagement Services have been created to oversee (not exhaustive) Children Missing Education, provision for medically unfit children and Fair Access.
- (i) Audits as directed by the LGO have been completed for the period between September 2016 and December 2018 and are referenced below.
- (j) Independent internal audits have been commissioned of admissions processes and of processes related to CME. Outcomes and any recommended additional actions are expected for December 2019.

Barriers to Effective Service

- 10. One of the key requirements of the FAP is that If a school refuses to accept the placement of pupils through the Fair Access Process, the Admissions and Transport Service Manager will seek to resolve such issues through contact

and negotiation with the relevant school, service or panel. Any issues regarding the application of the Protocol will be identified in the annual report to the Schools Adjudicator. In the case of this LGO ruling there were stages where admission of child D to a school roll was not achieved in a reasonable time.

11. Where schools are maintained by the local authority they can be mandated to admit a pupil. Where schools are 'own admissions authorities' (OAAs) this is not the case. In particular, academies may not be mandated to admit a pupil by the Council. The only recourse of the Council in respect of these schools is to report the matter to the Education Skills and Funding Agency (ESFA) as a contravention of the terms of their funding agreement. There is no set timeline in which ESFA or academy must respond in this regard. Typically this takes some time and, even if successful, impedes the admission of a pupil to school roll and increases the risk of a non-attendance exceeding 15 school days resulting in the pupil being classified as a CME.
12. Non-maintained providers may not inform the Council that individual pupils are no longer on roll despite a legal requirement to do so. If the council is not aware of these pupils it cannot commence proceedings to place them.
13. Parents may be advised that their child would be more appropriately educated at home. Whilst parents have this right it is challenging for the Council to track the whereabouts and value of education offer to these pupils if they are unaware of the position because it is not reported.
14. Ineffective data information systems and information sharing agreements with schools and academies obstruct the flow of accurate and up to date information about pupils on school rolls. Whilst the upgrade of its own systems is within the powers of the Council to address there are still schools in the county which routinely do not share pupil information. The Council has a major project underway to secure and implement an integrated children and young people's database across children's social care and education functions. It cannot force non-maintained schools to share data. This issue has been subject to much investigation and negotiation with providers this year and the number of schools which do not routinely share information is decreasing.

LGO Required Audit Outcomes – September 2016 to December 2018

15. Schools/academies are not consistent in their reporting of pupils who should be classified as CME. Therefore, a full audit of any pupils who were allocated a school place during this time has been undertaken. Any pupil record created on the councils' database and indicating the allocation of a school place which does not have a corresponding confirmation of admission to roll from the school identified has been researched to check they did not become a CME. A full analysis has been completed but will not be made public to

avoid potential identification of individual pupils. A summary of outcomes is shown below.

16. An audit of all cases presented to FAPs between September 2016 and December 2018 has confirmed that all children who were not on a school roll when referred were placed through this mechanism and their whereabouts are known to the council. A detailed analysis has been completed but will not be made to avoid potential identification of individual pupils. A summary of the findings is set out below.

Audit 1 above covers actions a) and b) required by the LGO.
After cleansing of the initial data a designated team employed for this purpose and managed by experienced council staff researched over 10,000 records.

The records identified over 9,600 pupils in the following categories.

- a. Pupil was admitted to the allocated school at the time and has since left.
- b. Pupil was allocated a place in an out of county school
- c. Current record not complete as allocated school that at the time did not share data. Pupil whereabouts has now been located.
- d. Pupil did not take up allocated place and went to independent school.
- e. Not Oxfordshire resident and accessed a place with another LA.
- f. Place was refused by family or child withdrawn to be educated out of school.
- g. For the remaining 400 pupil records LA staff have made direct enquiries of schools and other agencies to identify locations of pupils at that time. These records in schools are not conclusive but evidence is strong that these are pupils associated with Defence Academy moves, moves to the independent sector but admission to roll cannot be verified now as they will no longer be of statutory age, pupils that never took up UK residence as was expected. It should be noted that all pupil changes would have been discussed verbally with schools at the time and any child identified as still requiring a place found one or referred through the FAP process. Procedures to ensure this is routinely recorded formally on ICT systems have already been implemented.

Audit 2 above covers items c) and d) required by the LGO.

A record of all cases heard by IYFAPs in the period were analysed. It concludes that no other child was refused a referral to School H because they were not on roll at another school.

The cases were filtered to only include pupils of statutory school age at the time. The results show that a total of 21 young people were placed outside a 3 month timeframe having been considered at more than one FAP meeting. This includes Child D and the other case referenced in the LGO report. Three of these young people were then classified as CME.

LUCY BUTLER

Director for Children's Services

Background papers:

Contact Officer: Allyson Milward, Head of Access to Learning
November 2019