

CABINET– 17 SEPTEMBER 2019

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

Report by Director for Childrens Services

RECOMMENDATION

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

Executive Summary

2. The LGO has issued a report following its investigation of a complaint against Oxfordshire County Council. The complaint was about 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 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.
3. 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.
4. The finding is 'Report issued: upheld; maladministration and injustice'.
5. 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).
6. The LGO welcomes 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.
7. 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.
8. Both sets of recommendations are in hand and the outcomes of the latter will be reported to Education Scrutiny Committee at its meeting on 20th November 2019.

9. Child D has now taken GCSE examinations this academic year and intends to continue with further study in the next academic year.

Introduction

10. Mr and Mrs X complained the Council delayed in providing their child, D, with a suitable education when she was not able to attend school for medical reasons. This caused the family significant distress and D missed out on education for 14 months.
11. The finding of the report is that the council was found to be at fault causing injustice. Recommendations were made setting out action to be taken by the county council.

Outline of Case

12. In December 2016 Child D, resident in Banbury, stopped attending her independent school due to mental ill health.
13. In March 2017 she was formally removed from that school roll and parents, Mr and Mrs X made an application for a school place to the council. This application was acknowledged by email but not processed. This was an oversight and a mistake. The council has since strengthened procedures so that this should not happen again.
14. Mr & Mrs X enquired after progress in April 2017. By May 2017 Child D did not have a school place and had been out of education for 2 months. Two applications were made by the council to different secondary schools to admit Child X which were declined due to lack of places available; one application was made directly by Mr & Mrs X to an academy that was not part of the councils' in-year coordinated admissions arrangements. N.B. All secondary schools referred to in this case are academies and as such are the admissions authority for those schools and must give consent to the council to formally allocate places. The other schools concerned in this case have chosen to be included in the councils' co-ordinated admissions scheme.
15. In September 2017 three further applications to schools were made but were unsuccessful. In October 2017, following two further school refusals, the council informed Mrs X that Child D would be placed through the Fair Access Panel arrangements. The purpose of Fair Access Protocols (FAP) is to ensure that - outside the normal admissions round - unplaced children, especially the most vulnerable, are found and offered a place quickly, so that the amount of time any child is out of school is kept to the minimum. Every local authority is required to have in place a FAP, developed in partnership with local schools.
16. The operation of the FAP is outside the usual co-ordination arrangements operated by the council to admit children to school places and is

triggered when an eligible child has not secured a place under in-year admissions procedures. In other words if there are no spaces remaining from the published number of places available for offer in each school then this mechanism provides for the council and school community together to identify a place extraordinarily and ensure every child is offered a place and receive their education entitlement.

17. The School Admissions Code 2014 states that as a minimum the FAP should include children who have been out of school for two months or more and have special educational needs, disabilities or medical conditions but do not have an Education, Health and Care Plan.
18. The Council's FAP states that where a child is without a school place, a placement will be agreed at the FAP Panel meeting at which the case is considered. If the Panel is not able to make a decision on the most suitable placement, the Council will name a school after taking into account recorded comments of the Panel and any expressed preferences of the parent.
19. If a school refuses to accept a pupil when directed under the FAP:
 - if it is an authority-maintained school, the Council can direct the school to admit the child; or
 - if it is an academy or free school, the Council can make a referral to the Secretary of State to ask it to direct an admission. The Education and Skills Funding Agency manage these referrals.
20. The full FAP for Oxfordshire County Council is available at this link. https://www2.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/child_reeducationandfamilies/educationandlearning/schools/startingschool/admissionrulesandpolicies/rules_2019_20/InYearAdmissionsScheme2019-20.pdf
21. This sets out full details of the membership and operation of the FAP Panel.
22. In November 2017 the Fair Access Panel did not place Child D in any of the three closest schools to her home address nor did it seek the direction of the Secretary of State (SoS) to place her at one of these schools. Only the SoS can direct an academy to admit a child to its roll. This matter was considered again in January and February 2018 but with no school place being agreed for Child D.
23. In March 2018, OCC sought the opinion of Children and Adults Mental Health Service (CAMHS), despite Mrs X making this available in November 2017. At the March Fair Access Panel, three schools set an admissions condition that Child D had to attend a meeting at school prior to admission.
24. In May 2018, the council sought a direction from the SoS to an Oxfordshire school to admit Child D which was not successful. Mrs X made a complaint to her M.P. and the council and at the June Fair Access Panel, a different school agreed to take Child D on roll without the necessity of meeting her first.

25. In June 2018, Mrs X having made a complaint through the councils' formal complaints procedure an unreserved apology for OCC delays in placing Child D was issued at initial and further review stages. Child D now receives a package of education at home from School H, the Oxfordshire Hospital School outreach service and CAMHS provision. Having effectively missed all of Year 10, this has impacted on her ability to sit all the GCSEs that she would have otherwise done.

LGO Finding and Actions

26. The finding of the report is that the council was found to be at fault causing injustice.
27. 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 has been revised and is operational in the revised form from April 2019.
 - (b) There are regular weekly meetings between Admissions Officers and Children Missing Education Officers, from January 2019.
 - (c) 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.
 - (d) 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 and further updates will be provided to Education Scrutiny Committee as outlined at paragraph 32 below. 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 roll for education purposes.
 - (e) Transformation of Education Services will offer an opportunity to ensure synergies between Admissions, Fair Access and Children Missing Education are more closely aligned.
 - (f) Learner Engagement Services have been created to oversee (not exhaustive) Children Missing Education, provision for medically unfit children and Fair Access.
28. The LGO has welcomed the work the Council has already carried out, and has planned, to address the fault identified in this and a previous investigation. In that previous investigation the LGO found that the council had failed to provide any education for a pupil when out of school for medical reasons. A suitable remedy was agreed which included a review of relevant procedures and evidence this had been completed.

29. Recommendations were also made by the LGO setting out action to be taken by the council. These are set out below.
- a) The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members.
 - b) The Council has agreed to keep D's educational provision under review to ensure the number of hours tuition she is currently receiving is a suitable level of support.
 - c) Within three months of the date of this report, the Council has agreed to:
 - i. pay D £2,400 for the significant loss of education at an important time in her school life because it failed to provide her with a suitable education.
 - ii. apologise to Mr and Mrs X for its failure to inform them of their appeal rights when they made an in-year admissions application in March 2017;
 - iii. pay Mr and Mrs X £500 to remedy the prolonged and unnecessary distress and anxiety the Council caused them; and provide the LGO with evidence of its proposals for working with the family to ensure D receives appropriate educational provision from September 2019 when she begins her A level options.
30. The Director for Children's Services and Head of Learner Engagement for the council met with Mr and Mrs X in August. At that meeting Mr and Mrs X shared lessons learned from their perspective which have been incorporated into continuing work to improve council systems and processes and will inform the advice to Education Scrutiny Committee referred to in paragraph 32 below.
31. The LGO's report found that failings we found in this report may have affected other children in its area. As such the Council has 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.
32. The findings of the audit will 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.

33. The council will also provide evidence to the LGO that the audit has been completed.

LUCY BUTLER
Director for Children's Services

Background papers:

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