



CABINET – 5 FEBRUARY 2021

**LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN REPORT
REGARDING NURSERY CHARGES**

**REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE AND
DIRECTOR OF CHILDREN AND FAMILY SERVICES**

PART A

Purpose of the Report

1. The purpose of this report is to advise the Cabinet of a report of the Local Government and Social Care Ombudsman (LGO) in relation to the investigation of a complaint against the County Council as required by the relevant legislation where the LGO intends to issue his findings in a public report. The complaint relates to the Council's operation of the Free Early Education Entitlement (FEEE) scheme with one local provider where the LGO has found fault by the Council which caused injustice to the complainant in the case. The LGO report is appended to this paper.

Recommendations

2. It is recommended that the Cabinet –
 - a) Notes the public report of the Local Government and Social Care Ombudsman (LGO);
 - b) Requires the Director of Children and Family Services to implement the recommendations of the LGO as set out in paragraph 15 (a) to (c) of this report;
 - c) Notes the position in relation to the recommendations of the LGO where the Council departs from the recommendations as out in paragraphs 16 and 20 to 21 of this report.

Reasons for Recommendations

3. To bring to the attention of members of the Cabinet the facts of the case and to explain the various actions which the Council is taking in light of the Ombudsman's findings.

4. When a public report is issued by the LGO there is a statutory requirement that it is 'laid before the authority concerned' and there is an obligation for the Council to report back to the LGO to confirm this action has been taken.

Timetable for Decisions (including Scrutiny)

5. A report on complaints, including complaints to the LGO, and outcomes is made to the Corporate Governance Committee annually and the outcome of this report will form part of the next annual report to that Committee. The LGO requires the actions to be undertaken within 3 months of the date of the report. The actions relating to the complainant are completed or close to completion.

Policy Framework and Previous Decisions

6. The Free Early Education Entitlement (FEEE) scheme is a statutory scheme. When administering the scheme, Local Authorities are expected to have due regard to the Statutory guidance for local authorities on the provision of early education and childcare: <https://www.gov.uk/government/publications/early-education-and-childcare--2>.

Resource Implications

7. The implications arising from this case are minor in relation to this complainant. Dependent on the outcome of the work now required there is the potential for there to be wider financial implications for the Council.
8. The Director of Corporate Resources has been consulted on this report.

Circulation under the Local Issues Alert Procedure

None.

Officers to Contact

Lauren Haslam
Director of Law and Governance
Email: lauren.haslam@leics.gov.uk
Tel: 0116 305 6240

Jane Moore
Director of Children and Family Services
Email: jane.moore@leics.gov.uk
Tel: 0116 305 2649

PART B

Background

The Complaint

9. The LGO has investigated a complaint made by a parent of a nursery-aged child concerning the Council's administration of the FEEE scheme. That scheme entitles children of specified ages to receive up to 30 hours per week of funded FEEE provision, for 38 weeks a year.
10. The Council's duties in respect of administering the FEEE scheme are mainly set out in statutory guidance, which requires local authorities to 'work with' FEEE providers to ensure that (i) that no parent is charged a top-up for their child's FEEE hours entitlement; and (ii) that parents receive clear and transparent invoices. The Council is required to have 'due regard' to the terms of the statutory guidance and it is only permitted to depart from its provisions if it has good reason to do so.
11. The complainant considered that he was overcharged and alleges that he was required to subsidise or 'top-up' the free childcare element which was not, in his view, genuinely free.
12. The Ombudsman does not ordinarily have jurisdiction to make findings in relation to private companies. However, because the operator was delivering a statutory scheme funded by the Council, he scrutinised the invoices of this private company and held the Council responsible for the shortcomings in their charging arrangements.
13. The LGO has found in favour of the complainant in this respect and found that the invoices lacked clarity and transparency such that it was not possible for the complainant to see whether he had received his child's free entitlement.
14. The LGO concluded:
 - "(a) The law and the government guidance place clear obligation on the Council to
 - ensure the free early education entitlement is delivered completely free of charge; and
 - ensure nurseries delivering the free early education entitlement are clear and transparent about the charges.
 - (b) The Council has not fulfilled these obligations in respect of the Free Early Education provided by [the provider].
 - (c) We find fault in the way the Council has carried out its functions. The fault has caused [the complainant] an injustice. He has paid for nursery care which should have been free. Other parents may have suffered the same injustice. We have made recommendations to the Council."

The LGO Recommendations

15. The LGO's main recommendations are that the Council:
- (a) Takes whatever action is necessary to ensure [the complainant] and any other parents who have been charged top up fees by [the provider] receive their money back. Parents should be issued with a statement showing the number of free hours each child has received, any additional hours a parent has paid for, and any refund due. The Council should ensure this happens for children who joined the nursery since September 2018.
 - (b) Ensures all parents claiming their Free Early Education Entitlement at [the provider] receive clear, transparent and itemised invoices and receipts so they can see they have received their child's free entitlement completely free of charge and understand any fees paid for additional hours or services.
 - (c) Apologises to [the complainant] for failing to ensure he received his free early education entitlement completely free and for failing to uphold his complaint.
16. The LGO went on to make recommendations in relation to the FEEE generally; that the Council should review the arrangements for invoicing and charging at all other providers of the free early education entitlement it has an agreement with to ensure they comply with the law and government guidance, and that if that review identifies problems it should provide the LGO with an action plan to take the same remedial action as have recommended in this complaint. Finally, the Council was recommended to ensure the FEEE is not represented to parents as a monetary subsidy in any pricing schedule, invoice statement issued by any provider the Council uses.

The Council's Response

17. The Council has accepted the recommendations set out in paragraph 15 (a) to (c) above and has compensated the complainant in the sum of £1,200 in relation to any top-up that he may have paid for state funded nursery care and made a payment of an additional sum of £500 for any inconvenience he may have suffered and offered an apology for this.
18. The Council has instructed the provider concerned to disclose financial information in relation to its private nursery provision since September 2018. The Council will examine the evidence disclosed and consider which, if any, parents have a reasonable claim to be compensated.
19. To minimise the possibility of similar problems the Council has prepared updated charging guidance for all nursery providers in Leicestershire emphasising the need to comply with the current statutory guidance on the FEEE scheme. This guidance will be uploaded onto the Council's website.

20. The Council has advised the LGO of the difficulties in complying with the additional recommendations at paragraph 16 above, in that this would require the Council to review the charging arrangements of 539 childcare/nursery providers in Leicestershire. More than 11,500 children in Leicestershire benefit from the FEEE Scheme each year and it is clear that it would be a very substantial logistical exercise to review what the parent of every concerned child has been charged and this could not be achieved without drawing in very significant resources from other parts of the Council.
21. The Council has pointed out that it does not believe there is a systemic problem of overcharging by nursery providers in Leicestershire but that if an audit were to identify similar issues to the complaint advanced then, the Council would, on the basis of the LGO's recommendations, potentially have to pay out significant sums of monies which would be beyond the available grant funding for the FEEE. It is of note no other parents have advanced any complaint or expressed any dissatisfaction over the amounts they paid for private nursery care. The Council has also advised the LGO that this is a national issue rather than one which is unique to Leicestershire. It is reasonable for the Council to expect that issues over disparities between public and private rates of nursery provision and the impact on the FEEE arrangements should be resolved by Central Government rather than at a local level.

Legal Implications

22. Section 31(2) of the Local Government Act 1974 requires the Council to lay the LGO report before elected members for consideration.
23. Generally it is expected and usual practice for the Council to comply with all recommendations of the LGO but unusually in this case the Council intends to comply with the majority of the recommendations (and all of those which relate to the particular complainant) but to decline to follow the recommendations which relate to the much broader review of all other providers with whom the Council has an agreement for the provision of FEEE. The Council relies on case law in which it has been confirmed that local authorities are entitled to consider the impact on the fair and efficient allocation of scarce local resources in deciding whether to accept an Ombudsman's recommendation and, in appropriate cases, to reject such a recommendation because of a disproportionate effect on such resources.
24. If the LGO is not content with the approach that the Council has adopted he may issue a further report setting out that he is not satisfied with the action of the Council and he may make further recommendations.
25. Following the issuing of a public report there are also various requirements in relation to publicity and as with most LGO reports these are publicly available documents.

Equality and Human Rights Implications

26. This report relates to the provision of services to families of nursery-aged children who avail themselves of the FEEE. To this extent the LGO report relates to children but there are no Equality Act issues arising or Human Right Act issues arising or identified by the LGO.

Background Papers

Report of the Local Government and Social Care Ombudsman, appended
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6440&Ver=4>

Appendix

Report of the Local Government and Social Care Ombudsman