



CABINET – 23 MARCH 2021

**LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN REPORT
REGARDING PROVISION OF SUITABLE FULL TIME EDUCATION**

**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.
2. The complaint relates to the Council's duties to ensure children have access to suitable full-time education provision (Education Act 1996 and [School Admission Code, 2014; Annex A; and The Education \(Pupil Registration\) \(England\) Regulations 2006](#)). The LGO found fault by the Council which caused injustice to the complainant in the case. The LGO report is attached to this paper as Appendix A.

Recommendations

3. 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 20 (a)-(e) of this report;

Reasons for Recommendations

4. 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.

5. 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)

6. 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 three months of the date of the report. It should be noted that all but one of the actions have already been completed and it is anticipated that the final action will have been completed by the end of March 2021.

Policy Framework and Previous Decisions

7. The Department for Education issues statutory guidance about School Admissions in the School Admissions Code. Local Authorities have a duty to comply with the Code.
8. The Code says that each Authority must have a Fair Access Protocol agreed with the majority of schools in its area and to ensure that children and young people who do not have a school place are offered a place at a suitable school as quickly as possible.
9. Local Authorities have a duty to identify children of compulsory school age who are not registered at a school or receiving suitable education otherwise than at school. Local Authorities are expected to have robust mechanisms for tracking and enabling children not in education to be quickly returned to full time education either in a School or through alternative provision.

Resource Implications

10. The Ombudsman exercised his legal powers to scrutinise all Fair Access applications received by the Council since January 2019 and was satisfied that this was an isolated case. A payment of £7,500 in recognition of the missed education has been recommended.
11. Although the Council is confident that there are no other similar cases, significant steps within the Admissions and Inclusion Services have already been taken to further mitigate delay as experienced in this case.
12. The Director of Corporate Resources has been consulted on this report.

Circulation under the Local Issues Alert Procedure

13. None.

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PART B

Background

The Complaint

14. The LGO has investigated a complaint made by a parent that the Council failed to arrange appropriate full-time education for her daughter following a house move.
15. The Council's duties in respect of administering school admissions are set out primarily in the Education Act 1996 and the statutory School Admissions Code. Any parent can apply to their local authority outside of the normal round of Admissions as a mid-term transfer.
16. The complainant first made such an application in October 2018 in advance of an expected move in January 2019. The child was removed from a school roll on 18 January 2019.
17. The Ombudsman found the Council at fault for failing to ensure any education provision was in place until February 2020 when independent provision of 27.5 hours per week was commissioned. A school place was not secured until June 2020.
18. The LGO concluded:
 - (a) The parent's application for a school place suffered from significant 'drift' and the Council failed in its duty to provide education during a key stage of education (Years 10 and 11).
 - (b) That there was a lack of co-ordination between different teams and a number of opportunities were missed to take action which might have resolved things earlier.
 - (c) That the Council has limited powers to exercise over academies to ensure the admission of pupils into those schools but that in this case the Council failed to progress a referral to the Education and Skills Funding Agency (ESFA), where academies resisted admission, to seek a direction on its behalf.
19. The LGO welcomed in his report the Council's willingness to accept the above faults and that the Council had already taken pro-active remedial action in response.

The LGO Recommendations

20. The LGO's main recommendations are that the Council:
 - (a) Apologises to the complainant for the faults identified;

- (b) Makes a financial payment of £7,200 to the complainant for the child's educational benefit. This comprises £600 for each month that she was out of school running from January 2019 to February 2020. An additional payment of £300 should be made in recognition of the time, trouble and distress pursuing the complaint;
- (c) Reminds all Schools and Academies in its area of their duties under Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006. This relates to removing children from a School roll;
- (d) Provide an update on the progress made on the Council's action plan which set out a number of required improvements;
- (e) Arranges specific training with School Admissions / Fair Access and Children Missing Education Teams.

The Council's Response

21. The Council has accepted the recommendations set out in paragraph 20 (a) to (e) above and has either already carried out or is progressing all the actions. These will all be completed within the three months as stipulated. All of the actions have been captured in an action plan that is being overseen by the Assistant Director for Education and Special Educational Needs and Disabilities and is attached to this report as Appendix B. The action plan, which contains links to all of the evidence of implementation, will be shared with the LGO.

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. It is expected and usual practice for the Council to comply with all recommendations of the LGO. In this instance, the Council fully accepted the findings and considers the recommendations to be fair and reasonable.
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. The LGO requires that the Council publish a notice in the local press on two consecutive occasions (this is now completed) and also shares the final report with the Cabinet, both of which were required to be confirmed by 16th March.

Equality and Human Rights Implications

26. This report relates to the provision of school education. To this extent, Article 2 of the Human Rights Act 1998 is relevant which says that no person should be deprived of Education.

Background Papers

Report of the LGO Investigation into a complaint against Leicestershire County Council (reference number: 19 017 034) - <https://bit.ly/3dZOkuJ> (and appended to this report)

Appendices

Appendix A Report of the Local Government and Social Care Ombudsman
Appendix B Improvement Action Plan