



CORPORATE GOVERNANCE COMMITTEE – 4 JUNE 2021

FINAL OUTCOMES OF PUBLIC REPORTS ISSUED BY THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

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

Purpose of the Report

1. The purpose of this report is to update the Committee on the final outcomes following the issuing of two public reports by the Local Government and Social Care Ombudsman (LGO) against the County Council in recent months.
2. The first report (Reference 19 017 034) relates to the Council's duties to ensure children have access to suitable full-time education provision ([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 appended to this paper as Appendix A.
3. The second report (Reference 19 004 977) relates to the Council's operation of the Free Early Education Entitlement (FEEE) scheme with one local provider. Specifically, the duty to work with Nursery providers to ensure transparency of invoices and to ensure the provision of free nursery hours is offered in accordance with the statutory regulations.

The LGO found that the provider had charged a "top-up" causing injustice both to the family that made the complaint and potentially other families. It also determined that the Council had not sufficiently discharged its duty to monitor that providers follow the statutory guidance. The LGO report is appended to this paper as Appendix B.

Policy Framework and Previous Decisions

4. On 5 February 2021, the Cabinet received a report regarding the LGO's investigation of a complaint against the County Council (Reference 19 004 977) relating to the Council's operation of the FEEE with one local provider and the intention that the LGO would issue his findings in a public report. It resolved:

- a) That the public report of the Local Government and Social Care Ombudsman be noted;
- b) That the Director of Children and Family Services be required to implement the recommendations of the LGO as set out in paragraph 15 (a) to (c) of the report;
- c) That the position in relation to the recommendations of the LGO where the Council departs from those recommendations as set out in paragraphs 16 and 20 to 21 of the report be noted.

A copy of the Cabinet report was also circulated by the Director of Law and Governance to members of the Committee on 28 January 2021.

- 5. On 23 March 2021, the Cabinet received a report regarding the LGO's investigation of a complaint against the County Council relating to the Council's duties to ensure children have access to suitable full-time education provision and the intention that the LGO would issue his findings in a public report (Reference 19 017 034). It resolved:
 - a) That the public report of the Local Government and Social Care Ombudsman (LGO) be noted;
 - b) That the Director of Children and Family Services be required to implement the recommendations of the LGO as set out in paragraph 20 (a)-(e) of the Report.
- 6. At its meeting on 29 January 2021, the Committee requested an update be provided on the final outcome of the FEEE report. Whilst not directly requested, it was considered expedient to also update on the final outcome of the report relating to the Council's duties to ensure children have access to suitable full-time education provision.

Report 19 017 034 – Access to full-time education provision

- 7. The Department for Education issues statutory guidance about School Admissions in the School Admissions Code, 2014 (the 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 ensure that unplaced children are offered a place at a suitable school as quickly as possible.
- 9. The Code also sets out that 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.

Report 19 004 977 – Free Early Education Entitlement

10. The Free Early Education Entitlement (FEEE) scheme is a statutory scheme. The scheme, that is administered by Local Authorities sets out that all 3 and 4-year-olds in England are entitled to 570 hours of free early education or childcare a year. In addition, some two year olds are also eligible for some free childcare. 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://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718179/Early_education_and_childcare-statutory_guidance.pdf

Background

Report 19 017 034 – Access to full-time education provision

11. The LGO has investigated a complaint made by a parent that the Council failed to arrange appropriate full-time education for their daughter following a house move.
12. The Council's duties in respect of administering school admissions are set out primarily in the School Admissions Code 2014. Any parent can apply to their local authority outside of the normal round of Admissions as a mid-term transfer.
13. The complainant first made such an application in October 2018 in advance of an expected move in January 2019. The child was removed from the roll of the school from which they were moving on 18 January 2019.
14. The LGO 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 was commissioned. A school place was not secured until June 2020.
15. 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) The investigation highlighted a lack of co-ordination between different services and missed a number of opportunities to act which might have resolved things earlier.

- (c) An acknowledgement that the Council has limited powers to exercise over Academies but that it failed to progress referrals to the Education and Skills Funding Agency (ESFA), where academies resisted admission, to seek a direction on its behalf.

The Council's Response

16. The Council drew up a comprehensive action plan (attached as Appendix C) which included the following actions:
- Making a payment of £7,500 to the complainant recognising the missed education for a prolonged period.
 - Formally apologising to the complainant.
 - Carrying out a review of the Fair Access Protocol.
 - Arranging refresher training for all staff in the Admissions and Inclusion services.
 - Issuing a reminder to all Academies and Schools of their duties under Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006.
 - Review of procedures for managing Children Missing Education (CME) cases and developing additional safeguards to mitigate these issues occurring in the future.
17. In April 2021, the LGO confirmed their satisfaction with the actions undertaken and formally ended their involvement.

Report 19 004 977 – Free Early Education Entitlement (FEEE)

18. 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.
19. 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.

20. The complainant considered that they were overcharged and alleges that they were required to subsidise or 'top-up' the free childcare element, which was not, in their view, genuinely free.
21. The LGO 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.
22. The LGO 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 they had received his child's free entitlement.
23. The LGO concluded:
 - (a) "The law and the government guidance place a 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) A finding of 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 Council's Response

24. After accepting the LGO Public Report, the Council has undertaken the following actions:
 - Formally apologised to the complainant.
 - Made a payment of £1,700 to the complainant in recognition of the faults identified.
 - Taken steps to assure itself that the charging issues were indeed localised to one provider and one setting.
 - Issued updated guidance to all nursery providers on the need to operate transparent and clear charging mechanisms and comply with the statutory guidance

- Identified that a further 79 other families had been affected and a combined total of 38,292.5 hours that has been subject to the charging mechanism found to be at fault.

25. Discussions are ongoing with relevant parties to ascertain how issues arising from the LGO's Report should be resolved.

Resource Implications

26. Individual payments totalling £9,200 have already been made.

27. The Council is not legally obliged to adhere to the LGO's recommendations. However, if the Council chooses to compensate affected parents in line with the LGO's analysis then its total liability could be up to £41 355.90.

Timetable for Decisions

28. Both the above cases will feature along with a wider summary of all LGO complaints in an annual report to the Committee in November 2021.

Conclusions

29. Subject to agreement of financial payments to the 79 affected third parties identified, all actions have been carried out and this report provides evidence of the actions taken to avoid re-occurrence in the future.

Equality and Human Rights Implications

30. Both public reports relate 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.

Legal Implications

31. Section 31(2) of the Local Government Act 1974 requires the Council to lay all Public Reports before elected members for consideration.

32. 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.

33. 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.

34. 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. Requirements to publish the reports in the local press and present to Cabinet have been actioned for both reports

Circulation under the Local Issues Alert Procedure

35. 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

Background Papers

Report to the Cabinet on 5 February 2021 - Local Government and Social Care
Ombudsman Report Regarding Nursery Charges
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6440&Ver=4>

Report to the Cabinet on 23 March 2021 - Local Government and Social Care
Ombudsman Report Regarding Provision of Suitable Full Time Education
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6441&Ver=4>

Appendix

Appendix A - Report of the LGO relating to the Council's duties to ensure children have access to suitable full-time education provision.

Appendix B – Report of the LGO relating to the Council's operation of the Free Early Education Entitlement (FEEE) scheme with one local provider.

Appendix C - Improvement Action Plan

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