

**SURREY COUNTY COUNCIL**

**CABINET**

**DATE: 22 JULY 2014**

**REPORT OF: ANN CHARLTON, MONITORING OFFICER**

**SUBJECT: LOCAL GOVERNMENT OMBUDSMAN REPORT WITH A FINDING OF MALADMINISTRATION**



#### **SUMMARY OF ISSUE:**

This report concerns the Local Government Ombudsman's findings in response to a complaint concerning the service provided to the complainant and her child. The complaint was brought against both Surrey County Council and the NHS Trust and the Ombudsman has unusually provided a joint report. The Cabinet is asked:

- to consider the Ombudsman's report
- to satisfy itself that steps have been taken to address the findings and consider whether any other action should be taken
- to make arrangements for a response to this report and the Ombudsman report to be prepared and sent to the Ombudsman and all Members of the Council

The production of this Monitoring Officer report is a statutory requirement under Section 5A of the Local Government and Housing Act 1989. The Council's Monitoring Officer has to report to the Council's executive body when the Local Government Ombudsman has conducted an investigation into a complaint against the Council and has found that maladministration has occurred. The Act also states that the report should be sent to all Council members and this has been done.

The requirement for the Cabinet to consider and respond to the Ombudsman's report is also covered by provisions in the Local Government Act 1974. Within three months of the receipt of the report it has to have considered the report and notify the Ombudsman of any action the authority has taken or proposes to take.

#### **RECOMMENDATIONS:**

It is recommended that that Cabinet:

1. consider the Ombudsman's report.
2. satisfy itself that steps have been taken to address the findings and consider whether any other action should be taken.
3. delegate to the Assistant Directors for Children's and Safeguarding Services and Schools and Learning, in consultation with the Cabinet Member for Children and Families, the requirement to produce a response to this report and to the Ombudsman's report and ensure that this is sent to all Members and to the Ombudsman.

## **REASON FOR RECOMMENDATIONS:**

There is a statutory requirement to respond to an Ombudsman report that identifies maladministration and a need for the Cabinet to consider what action needs to be taken as a result of the report.

## **DETAILS:**

1. The Local Government Ombudsman has investigated a complaint made by Mrs D on behalf of herself and her son, C, that the services provided by both Surrey County Council and the NHS Trust between January 2007 and February 2011 were inadequate, uncoordinated and failed to meet their needs.

2. The Ombudsman found that there had been maladministration, on the part of both Surrey County Council and the NHS Trust, causing injustice. In relation to Surrey County Council the Ombudsman found that:

Education failed:

- to provide an appropriate amount of home tuition to help C prepare for GCSE examinations
- to consider continued provision of home tuition after July 2008.

Children's Services failed:

- to undertake a risk assessment with appropriate urgency
- to allocate a social worker for a significant period
- to complete the core assessment in a reasonable time
- to arrange the social activities for C recommended in the core assessment
- to refer C to the Transitions Team in accordance in accordance with statutory guidance
- to advise Mrs D of the availability of a carer's assessment and;
- to complete the carer's assessment within a reasonable time

3. The Ombudsman has decided that a compensation payment of £5000 would be appropriate to remedy the injustice caused to Mrs D and C, and the officers of Schools and Learning and Children's Services in consultation with the portfolio holder have agreed to this.

4. The Ombudsman has made other findings of maladministration in relation to the actions of the NHS Trust. Surrey's officers regret that these failings occurred and have agreed to send a joint apology with the NHS Trust to the complainant to acknowledge failings. The Council has also agreed to work with C and to develop action plans to address the failings identified.

### **The Ombudsman's Report**

5. The Local Government Ombudsman investigates and reports on complaints from members of the public who claim to have sustained injustice as a result of maladministration. Maladministration can encompass a number of failings by an authority, including inattention, neglect and delay. Where the Ombudsman decides that injustice has been caused by an authority's

maladministration, the authority concerned must consider the Ombudsman's report. In this case the Ombudsman's final report was published on the 12 June 2014.

6. The Council has three months from the publication of the final report to notify the Ombudsman of the action which has been taken or will be taken in response to his report. The Assistant Directors of Children's and Safeguarding Services and Schools and Learning, following consultation with the portfolio holder, have already agreed to pay £5000 and to send a joint apology with the NHS Trust and acknowledge failings, as well to undertake the recommended work with C and develop action plans. The Cabinet will need to consider whether there are any further recommendations it wishes to make in response to the report.
7. The full Ombudsman's report of this case has been made available for public inspection as required by law. It is attached as Annex A.
8. Once Cabinet Members have considered the Ombudsman's report and the response from the services they should decide whether they are satisfied with the actions. A response to this report needs to be formulated by the Cabinet which must be sent to all Members of the Council. A formal response to the Ombudsman will need to be sent by 12 September 2014.

#### **CONSULTATION:**

9. The Chief Executive and Director of Finance have been consulted on this report in accordance with the statutory requirements. The Assistant Directors for Children's and Safeguarding Services and Schools and Learning and colleagues in the services have also been consulted. The Leader has been consulted and the Cabinet Member for Children and Families has been informed. A copy of this report will be sent to every Member of the Council.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

10. The finding highlights the risk that if policies and procedures do not adequately ensure the Council meets its duties there is a risk of complaints, potential legal challenge, and adverse publicity.

#### **Financial and Value for Money Implications**

11. The Council has agreed to pay £5,000 to the complainants as recommended by the Ombudsman.

#### **Section 151 Officer Commentary**

12. All material, financial and business issues and risks have been considered and addressed.

#### **Legal Implications – Monitoring Officer**

13. The Local Government and Housing Act 1989 places a duty on the Monitoring Officer to report the Ombudsman's findings to the Cabinet and to send a copy of her report to each Member of the Council. The same Act places a duty on

the Cabinet to consider this report and as soon as practicable after it has concluded its consideration of the report to prepare its own report specifying:

- what action, if any, the Cabinet has taken in response to the report
  - what action, if any, the Cabinet proposes to take in response to the report and when it proposes to take that action
  - the reasons for taking the actions or, as the case may be, for taking no action.
14. A copy of that report must also be sent to each Member of the Authority. The Local Government Act 1974 also requires the Cabinet to consider and respond to any Ombudsman report making a finding of maladministration.
15. The Ombudsman's report itself is available for members of the public to inspect and a statutory notice relating to it has been published in the local press.
16. The Ombudsman's recommendations are not legally enforceable although it is extremely unusual for an authority not to accept them. If the Ombudsman is not satisfied with the action proposed she can publish a further report and can compel an Authority to publicise her views. In this instance officers have accepted the findings of the Ombudsman, agreed to pay the amounts recommended by the Ombudsman and have agreed to make an apology.

#### **Equalities and Diversity**

17. The Council has to have due regard to its equality duties under the Equality Act 2010 and will need therefore to consider the impact of these issues on individuals with protected characteristics. Particularly relevant here are the characteristics of disability and age (in so far as this concerns a disabled child). The duties relating to special educational needs are enshrined in law to ensure that such children get the support that they require to help them with their education. The sum of money identified here has been recommended by the Ombudsman as a proportionate response in recognition of the failure to provide the support in this case. Members will no doubt wish to consider whether there are any other lessons to learn to avoid any future similar adverse impact on children with disabilities and their families.

#### **Corporate Parenting/Looked After Children implications**

18. There are no implications for corporate parenting/looked after children arising from this report.

#### **Safeguarding responsibilities for vulnerable children and adults implications**

19. There are no implications for safeguarding responsibilities for vulnerable children and adults arising from this report.

#### **Public Health implications**

20. There are no implications for public health arising from this report.

**Climate change/carbon emissions implications**

21. There are no implications for climate change and carbon emissions arising from this report.

**WHAT HAPPENS NEXT:**

22. A report of the Cabinet's response to the Ombudsman's recommendations will be produced and sent to all Members and to the Ombudsman.
23. The matter will be reported to the Council for it to note.
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**Contact Officer:**

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**Consulted:**

See paragraph 9 above

**Informed:**

See paragraph 9 above

**Sources/background papers:**

Report of the Local Government Ombudsman no 09 007 810

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