

SURREY COUNTY COUNCIL**CABINET****DATE: 28 MARCH 2023****REPORT OF CABINET MEMBER: CLARE CURRAN, CABINET MEMBER FOR EDUCATION AND LEARNING****LEAD OFFICER: LIZ MILLS, DIRECTOR EDUCATION AND LIFELONG LEARNING****SUBJECT: LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN PUBLIC REPORT REGARDING CONCERNS ABOUT THE DELIVERY OF EDUCATION FOR CHILDREN WITH ADDITIONAL NEEDS AND DISABILITIES (SEND)****ORGANISATION STRATEGY PRIORITY AREA: EMPOWERING COMMUNITIES****Purpose of the Report:**

The Ombudsman has found the Council to be at Fault for the following reasons:

- The provision set out in the child's EHCP was not fully met between September 2020 and March 2022. This meant that the child missed out on a significant amount of education and therapy provision during this period.
- The Council did not adhere to the specifics of the two-tier Corporate Complaint Process. This delayed the consideration of the complaint and the complainant's ability to escalate the complaint to the Ombudsman.
- As the Ombudsman has found that maladministration causing injustice has occurred, under Section 31(2) of the Local Government Act 1974, the report must be laid before the authority concerned. The Ombudsman welcomed the Council's willingness to reflect on his findings to inform future improvements.
- The Council has accepted the recommendations of the Ombudsman. The Council will pay a total of £5400 for the educational benefit of the young person and a further £2000 for distress, uncertainty, time and trouble for the complainant in pursuing the complaint. It will also apologise to the family and review its procedures for arranging and monitoring the delivery of provision within an EHC Plan as well as reviewing the complaint handling procedures within the CFLL Directorate.

Recommendations:

It is recommended that Cabinet:

1. Consider the Ombudsman's report and the steps that will be taken by the Service to address the findings, and
2. Consider whether any other action should be taken.
3. Note that the Monitoring Officer will be bringing this report to the attention of all councillors.

Reason for Recommendations:

There is a statutory requirement for the Monitoring Office to bring to Members' attention any public report issued by the Ombudsman about the Council which identifies it is at fault and has caused injustice as a result.

Executive Summary:

1. The Local Government and Social Care Ombudsman has investigated a complaint made by a parent of a child with additional needs and disabilities. A report into the investigation will be published by the Local Government and Social Care Ombudsman. The identity of the family in question is not made publicly available.
2. Mrs X complained the Council failed to deliver provisions set out in her son, Y's, Education, Health and Care plans between September 2020 and March 2022. It also handled her complaint poorly. She says Y missed out on special educational provisions as a result which have impacted on his education and caused her and her son distress. She wants the Council to acknowledge its failings and provide a financial remedy for the lost special educational provision, the distress caused to her and Y and poor complaint handling. She also wants the Council to improve its services.
3. Mrs X's son, Y, has special educational needs and an Education, Health and Care plan (EHC plan). In September 2020, his plan included the following special educational provisions:
 - 15 hours tutoring a week;
 - 1 hour speech and language therapy a week with a termly review;
 - occupational therapy – weekly sessions, a sensory diet programme and daily implementation of an occupational therapy programme;
 - a personal learning plan including education and therapeutic input, with a termly multi-disciplinary review.
4. Mrs X was unhappy with the content of the plan and appealed to the SEND Tribunal. Mrs X says between September 2020 and January 2021, Y received 4 hours tuition a week. Between February and July 2021, he received 6 hours a week. The Council has not provided any evidence to show it offered more tuition or that Y received more tuition than this during this time.
5. The SEND Tribunal heard the case in April 2021 and ordered the Council to include the following provisions in Y's plan:
 - 25 hours tutoring a week; provision of an occupational therapy (OT) programme.
 - 18 hours a year of speech and language therapy.
 - weekly non-directive therapeutic provision e.g., animal therapy.
6. The Council amended the EHC plan in line with the Tribunal order and issued the final plan in mid-May 2021.
7. Mrs X complained to the Council in June 2021. She said the Council had failed to provide education and deliver provisions in Y's plan since September 2020 and despite the Tribunal's order, provision listed in the May 2021 final plan was still not in place. She said that the provisions set out in the September 2020 EHC plan were not met.

8. The Council told Mrs X it would not consider her complaint at that time as she had another complaint currently being considered by us. It told her it was putting the complaint “on hold”.
9. In July and August 2021, the Council worked to get provision in place. By the beginning of September, Y was receiving the 25 hours tutoring, OT provision and some speech and language therapy. Mrs X complained that Y was still not receiving all the provisions in his plan. She said the animal therapy and some speech and language therapy was still not in place.
10. At the end of September, the Council wrote to Mrs X. It said it had now agreed to fund 18 hours of speech and language therapy and that the animal therapy could start. In its response to our enquiries, the Council said this email was its stage 1 complaint response. However, the email did not indicate that it was a formal complaint response, nor did it tell Mrs X of her right to request a stage 2 investigation, if she remained dissatisfied. The Council said it closed her complaint in October as it did not hear from Mrs X after this email.
11. In November 2021, Mrs X contacted the Council to say Y had been unable to engage with his occupational therapist and she felt he needed a different therapist. She also said the animal therapy sessions still had not begun
12. The OT provider contacted the Council to say Mrs X had asked it to be involved in termly multi-disciplinary meetings as this provision was in Y’s EHC plan. It said the Council had not asked for this and so it was not covered in the original quote. It set out its quote for it to attend 3 multi-disciplinary meetings a year and asked the Council to approve the additional funding. The Council did not respond to this request.
13. In December 2021, the OT provider told the Council it could no longer deliver Y’s provision. It said Y had struggled to engage with his therapist. Mrs X had asked if he could be allocated a different therapist, but they did not have an alternative therapist available.
14. As part of its feedback to the Council, the OT provider said the Council had not funded any hours for multi-disciplinary meetings. Because of this, it had been unable to liaise with other professionals working with Y to learn and share what worked for him. If they had been able to do this, it might have helped them understand better how they could engage him.
15. Between December 2021 and February 2022, the Council says it contacted 10 other OT service providers, but none had capacity. In February 2022, Mrs X asked the Council for an update on the OT provision and the animal therapy. She said the animal therapy provider had told her it could begin several weeks ago, and she did not know why this had not started. The Council said it had sent the provider some finance forms in September 2021, but the provider had not returned them. It said it would work to resolve the issue. Y began attending animal therapy sessions in March 2022.
16. In March 2022, Mrs X re-submitted her June 2021 complaint to the Council. In addition to the issues raised in June 2021 she said:
 - delays in agreeing the funding for therapies during Summer 2021 had led to difficulties co-ordinating the provision, even though the Council was dutybound to deliver all the provisions set out in the EHC plan as ordered by the SEND Tribunal.
 - she was unsure why the Council did not investigate her complaint in June 2021, as the ongoing Ombudsman investigation related to an earlier time period. The Council had then closed her complaint during Autumn 2021 without telling her, which had delayed any meaningful resolution to the issues raised; and

- Y did not receive any animal therapy between May 2021 and March 2022.

17. In April 2022, the Council told her it had considered her complaint at stage 2 of its complaint's procedure. It said it had decided to ask the local service to provide a more detailed response, as it had not yet fully considered the issues raised at stage 1. The Council provided an additional complaint response in May 2022. It accepted there had been a delay setting up the animal therapy and offered her £300 to recognise this. It said it had tried to get another OT provider in place, after Y's provider withdrew in December 2021. However, it had not been able to find a replacement. It accepted it had not delivered all Y's educational and therapeutic provision. It said it had offered her a financial remedy for lost provision after its stage 2 response.
18. Mrs X responded and said the remedy offer it referred to was made after a previous complaint she made about lost special educational provision before April 2020. The Council told her it had completed its consideration of her complaint and she could bring her complaint to us if she remained dissatisfied. Mrs X brought the complaint to us in May 2022.
19. The LGSCO previous investigation found that the Council had failed to provide Y with a substantial amount of education between March 2018 and April 2020, causing him a significant injustice. The Council agreed to pay Y £1,000 to recognise the distress caused and Mrs X £600 for distress and time and trouble in bringing her complaint. The LGSCO finds that the faults identified in this investigation follow on consecutively from the previous investigation and have caused Y a significant additional, and compounded injustice for support he was entitled to receive by law. Mrs X has also been caused a significant additional injustice bringing this further complaint on his behalf.
20. The Council has accepted the outcome of the Ombudsman's investigation as follows:
- Injustice caused to Y by lost hours of education and therapy provision between September 2020 and March 2022. The Council has agreed to pay £5400 to be used for Y's educational benefit.
 - Impact of the faults identified and injustice to Mrs X as well as Y. The Council has agreed to pay £1000 to recognise the frustration and distress caused over a prolonged period (September 2020 to May 2022) as a result of the faults identified.
 - Impact of poor complaints handling, specifically around learning from complaints because this is the second time she has had to complain to us about very similar matters;
 - Impact of the distress caused by the lost provisions and the enduring nature of the Council's failure to provide suitable education and special educational provisions for him between September 2020 and March 2022. The Council has agreed to pay £1000 to Y to remedy the enduring injustice resulting from the Council's failures since 2018, as set out in this report and the previous decision issued by the LGSCO.
21. The Council has also agreed to:
- review its procedures for how it arranges and monitors delivery of provisions in the EHC plans of its children and young people that it is under a nondelegable duty
 - review its children's and education services complaints handling processes to ensure complaints are investigated in line with its policy. It should ensure all

complaint response letters make it clear whether they are a stage 1 or stage 2 response and tell the complainant what to do if they remain dissatisfied following the response. It should also provide evidence it has reminded its staff of this need to be clear and follow the correct complaints process.

Consultation:

22. The Chief Executive and S151 Officer have been consulted on this report in accordance with the statutory requirements.

Risk Management and Implications:

23. The Ombudsman findings highlight service failures that caused injustice to a vulnerable child and his family. Staff training will be delivered to prevent a recurrence of these issues.

Financial and Value for Money Implications:

24. The Council will pay £7,400 to the family as recommended by the Ombudsman. Despite being linked to spend within SEND, as a compensation payment this is to be funded from the General Fund.

Section 151 Officer Commentary:

25. Although significant progress has been made to improve the Council's financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium-term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
26. The Section 151 Officer supports the payments in line with the recommendations of the Ombudsman.

Legal Implications – Monitoring Officer

27. The Ombudsman has made a finding of fault (described in law as maladministration) causing injustice. The inadequacies identified include failures on the part of Children's Services to comply with statutory duties placed upon them. The Local Government and Housing Act 1989 places a duty on the Monitoring Officer to report these findings to the Cabinet and draw his report to the attention of each Member of the Council.
28. Ombudsman's recommendations are not legally enforceable although it is extremely unusual for an authority not to accept them. In this instance Officers have accepted the findings of the Ombudsman, agreed to pay the amounts recommended as compensation and have agreed to make an apology

Equalities and Diversity:

29. The Council must have due regard to its equality duties under the Equality Act 2010 and to consider the impact of its decisions and actions on individuals with protected

characteristics. Particularly relevant here are the characteristics of disability and age (in so far as this concerns a young person with special educational needs). 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. 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, those who care for them and their families. The potential implications for the following council priorities and policy areas have been considered.

Other Implications:

30. The potential implications for the following council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area Assessed	Direct Implications
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Environmental sustainability	No significant implications arising from this report
Public Health	No significant implications arising from this report

What Happens Next:

31. An apology letter was sent to the family on 30 January 2023.
32. The request for the financial remedy to be paid was shared with Financial Services on 24 January 2023 and payment made on 30 January 2023.
33. In addition to an internal audit review completed in December 2022, the CFLL Customer Relations Team has arranged further training by the LGSCO for all officers who respond to complaints to ensure they are familiar with the process, including the different requirements at each stage. Dates have been booked through to May 2023.
34. The CFLL Customer Relations Team have also designed and delivered specific training to the Inclusion & Additional Needs Leadership Team for handling complaints in a way that leads to service improvement. The training slides are attached alongside this report.
35. CFLL services have also initiated a Customer Relations steering group with representatives from Customer Relations, Communication Services, and Inclusion & Additional Needs, in order to identify, pre-empt and respond to key themes in complaints.
36. Service managers from across ELL services (Children not in School, SEND Systems & Planning, Education & Inclusion) have together undertaken a review of the procedures for arranging support under EHC plans and the procedures for reviewing this support. The review, which was already in process prior to the LGSCO judgement, has also drawn on feedback from schools via the SENCO network. The final report and recommendations will be available two weeks in advance of the planned LGSCO deadline of 17th March. A draft copy is included alongside this report.
37. Evidence of this report being considered at Cabinet on 28 March 2023 will be sent to the Ombudsman.

Report Author:

Jessica Brooke, CFLL Customer Relations Manager, 07891001205

Annexes:

Annex 1 LGSCO Public Report Reference 22 000 826

Annex 2 Training slides for handling customer complaints

Annex 3 DRAFT – Non delegable duty review

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