

**SURREY COUNTY COUNCIL
CABINET**



DATE: 27 FEBRUARY 2024

**REPORT OF CABINET CLARE CURRAN, CABINET MEMBER FOR
MEMBER: CHILDREN, FAMILIES AND LIFELONG LEARNING**

**LEAD OFFICER: JULIA KATHERINE, 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 EMPOWERING COMMUNITIES
STRATEGY PRIORITY
AREA:**

Purpose of the Report:

The purpose of this report is to bring to Members' attention a public report which has been issued by the Ombudsman. In this report, the Ombudsman has found the Council to be at fault for the following reasons:

- The Council failed to meet the statutory 20-week deadline for K education, health and care (EHC) needs assessment. This has been mainly due to a delay in obtaining advice from its educational psychology service .
- In response to complaints, the Council agreed to give Mrs J a contact officer who would keep in touch with her, but that did not happen. As a result of this, the Council's communications are judged to have been poor. The Council failed to provide Mrs J with updates as agreed in its complaint response.
- The impact of this on the child is that they were not able to access education. There has also been a negative impact on the family, causing uncertainty and frustration as a direct result of the delay. K was at the end of their Key Stage and due to the delay in completing the assessment, K was unable to attend taster days at mainstream schools that Mrs J felt were unsuitable.

The Council accepts the Ombudsman's recommendations. The apology letter and financial remedy have now been actioned.

Recommendations:

It is recommended that Cabinet:

1. Considers the Ombudsman's report and the steps that have been taken by the Service to address the findings;
2. Considers whether any other action should be taken; and
3. Notes that the Monitoring Officer will be bringing this report to the attention of all Members of the Council.

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. The Ombudsman has ruled that the Council has delayed the education, health and care (EHC) needs assessment for Mrs J's child, K. This has been mainly due to a delay in obtaining advice from its educational psychology service. It had also not prioritised K's application, despite them being in Y2, which is a change of Key Stage. In response to complaints, the Council agreed to give Mrs J a contact officer who would keep in touch with her. But that did not happen. Mrs J says the impact on K is that they have not been able to access education. The whole family has had counselling, as a direct result of the delay. K was at the end of their Key Stage. And, due to the delay, K attended taster days at mainstream schools, despite the schools saying a placement would not work for them.
3. When the Council agreed to assess K, in September 2022, to ascertain whether they needed an EHCP, the Council was not operating a risk assessment system for EP assessments. At the point that the allocation system was introduced, the statutory deadline for Key Stage Transfer had passed, so the case was then not allocated based on that priority. There were no other indicators that suggested the need for a priority assessment.
4. The Council responded to a Stage 2 complaint in March 2023, and undertook to communicate regularly with the family in relation to the status of their case. This regular communication was not proactively undertaken. Since this case, the Council has established the expectation that all families who are waiting receive regular, proactive communications from the SEN team, and the area managers are expected to check and review that this is in place. Additionally, the Council is in the process of training a new helpdesk team to support with communications to families and other stakeholders.

The Council's Recovery Plan

5. A comprehensive multi-agency recovery plan is underway with the objective of achieving an overall Education Health and care needs assessment timeliness rate of around 60% by the end of May 2024. This target surpasses the national timeliness percentage and aligns closely with Surrey County Council's 2021 performance.
6. The approach being undertaken is to address overdue assessments and ensure timely assessments for children with higher risks.

7. To support this initiative a £15 million investment has been allocated for Special Educational Needs (SEN), Educational Psychology (EP), and early intervention capacity over a three-year period.
8. The plan encompasses three key objectives:
 - Reducing Long Waiting Times: To complete the EHC needs assessments for all children, young people, families, and schools who have been waiting longer than the statutory timescales as soon as practically possible.
 - Better Support While Waiting: To support children, young people, families, and schools as effectively as possible whilst they are having to wait longer than they should.
 - Securing a Sustainable Service Model: The goal is to restore a sustainable service quickly, ensuring that the majority of EHC needs assessments are completed within statutory timescales, beginning with achieving a 60% rate and ultimately striving for 100%.
9. Targets have been set against each objective and progress is being rigorously monitored.
10. To date there has been an increase of over 100 EP assessments being completed per month, continuing the reduction in the backlog of unallocated EP assessments. The number of unallocated cases has reduced from 1014 cases in May 2023 to 130 at the end of January 2024.
11. It is ensured that EP assessment requests made prior to mid-2023 have been allocated and those from the second half of the year are now being worked through.
12. All 2022 assessments have now been completed, and all assessments requested before July 2023 are either completed or allocated. 95% of assessment requests from July 2023 are either completed or allocated, and 86% of assessment requests from August 2023.
13. Alongside work to increase EP assessment capacity, work is underway with external providers including Children and Family Health Services and Mindworks to ensure their timeliness is monitored and does not impact overall timeliness of EHCNA's.
14. Better support is also being provided to children and their families whilst waiting. Specialist Teachers for Inclusive Practice are providing proactive outreach support to children and families awaiting an overdue needs assessment through regular visits to all schools.
15. The need to ensure services are sustainable is recognised and a business case for the EP service is being developed to ensure that it is right sized for the future. In addition, an end-to-end review of the SEN service is being carried out to ensure there is sufficient capacity to manage workloads and improve communication with families. It is regrettable that these measures were not having an impact at the time of Ks assessment.

16. The Ombudsman is issuing this report to highlight the difficulties faced by Surrey County Council, which are similar to those experienced by several other councils in England. There is an acknowledged national shortage of educational psychologists and an increase in demand for EHC needs assessments. The Ombudsman has provided details of K's case in this report to illustrate those affected by this and the approach being taken regarding service failure and recommendations for the injustice caused and any service improvements the Ombudsman might request are made. It is important to note that the Ombudsman has investigated many other similar complaints across several councils. Government statistics show that for the 2023 reporting period, only 49.2% of EHC Plans in England were issued within the statutory 20-week deadline.
17. Where the Ombudsman finds fault, it recommends that an organisation makes improvements to its service. In this case, the Ombudsman is satisfied at this stage that the Council fully considered the matter at meeting of its Cabinet on 25 July 2023 and through its publicised Recovery Plan. So, the recommendations for service improvements are limited to recommendations regarding democratic oversight and public information.

Council Response

18. The Council has accepted the outcome of the Ombudsman's investigation as follows:

- The Council has agreed to pay £1000 to Ms J to remedy the enduring injustice resulting from the Council's failures for the distress to her for the delays in issuing K's EHCP plan.

19. The Council has also agreed to:

- To prepare quarterly reports to its relevant committee, to ensure democratic oversight of its Recovery Plan.
- To publish updates on its website, so those affected by delays can track progress.

Consultation:

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

Risk Management and Implications:

21. The Ombudsman's findings highlight service failures that caused injustice to a vulnerable child and their family. The Council has agreed to prepare quarterly reports to its relevant committee, to ensure the democratic oversight of its Recovery Plan; and to publish updates on its website, so those affected by delays can track progress

Financial and Value for Money Implications:

22. The Council will pay £1000 to the family as recommended by the Ombudsman. Despite being linked to spend within SEND, as a symbolic financial remedy payment this is to be funded from the General Fund.

Section 151 Officer Commentary:

23. 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 202/24 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.
24. The Section 151 Officer supports the payments in line with the recommendations of the Ombudsman.

Legal Implications – Monitoring Officer

25. 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.
26. 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:

27. 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:

28. 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:

- 29. An apology letter was sent to the family from Julia Katherine, Director of Education and Lifelong Learning on 12 of January 2024.
- 30. The Ombudsman’s recommended financial remedy was taken forward on the 12 January 2024 and family received this on the 17 January 2024.
- 31. Evidence and impact of the Council’s EHCNA Accelerated Recovery Plan performance is being considered and scrutinised at the Council’s Select Committee on 15 February and details will be sent to the Ombudsman.

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Annexes:

Annex 1 LGSCO Public Report Reference 23 000 8

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