

SURREY COUNTY COUNCIL**CABINET****DATE: 18 DECEMBER 2018****REPORT OF: SARAH BAKER, MONITORING OFFICER****SUBJECT: LOCAL GOVERNMENT OMBUDSMAN REPORT WITH A FINDING OF MALADMINISTRATION****SUMMARY OF ISSUE:**

This report concerns the findings of the Local Government and Social Care Ombudsman (the Ombudsman) in response to a complaint concerning the service provided to a Surrey family.

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 (Cabinet) when the Ombudsman has conducted an investigation into a complaint against the Council and has found that maladministration causing injustice has occurred.

The Council has apologised to the family for failing to provide the agreed remedy following a previous complaint with regard to failings in their son's educational provision, and for failing to honour its commitments to the Ombudsman. A plan is now in place to provide a consistently high standard of response to enquiries from the Ombudsman. In addition, the Council has taken steps to check that the family now receives the provision needed for their son, and whether other children who may have been affected by a general shortfall in occupational therapy provision needed additional therapy.

RECOMMENDATIONS:

It is recommended that that Cabinet:

1. consider the Ombudsman's report and the steps taken by the service to address the findings,
2. consider whether any other action should be taken, and
3. note that the Monitoring Officer will be bringing her 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 Ombudsman report on the Council that identifies it is at fault and has caused injustice as a result.

DETAILS:

1. The Local Government Ombudsman has investigated a complaint made by parents of a child with special needs that the Council failed to provide the agreed

remedy for his previous complaint to the Ombudsman. A report into the investigation (Annex 1) was published on 14 November 2018.

2. The identity of the family in question is not made publicly available and the Ombudsman refers to the complainant as 'Mr B' in his report, and his son as 'C'. In May 2018, the Ombudsman upheld Mr B's previous complaint that the Council was at fault for failing to meet C's educational needs properly, including for C having no school place for half a school year in 2016/17 and for not receiving the therapy his education, health and care plan said he needed. The Council agreed to the Ombudsman's recommendations to put matters right, so the investigation was ended.
3. When the timescale for the Council's agreed actions passed, it appeared that the Council had not carried out any of them. The Ombudsman therefore investigated a new complaint from Mr B that the Council had not provided the agreed remedy for the previous complaint.
4. The Council had agreed to do the following to resolve the previous complaint:
 - Apologise.
 - Obtain assessments from relevant professionals of whether C needs any extra educational provision, Occupational Therapy (OT), or Speech & Language Therapy (SLT) to reach the points he would be likely to have reached if he had been in school. If he does, the Council should ensure C receives this, at the Council's expense.
 - Pay Mr B £2,200 in respect of C's missed educational provision.
 - Pay Mr and Mrs B an additional £750 each (£1,500 altogether) to acknowledge the injustice the Council's faults caused the family.
 - Obtain assessments from relevant professionals of whether other children affected by the problems with the Council's OT provision need any extra OT to make up for what they lost. If they do need this, the Council should ensure they receive it, at the Council's expense.
5. The Council sent the apology over two weeks late, after the Ombudsman had chased, and was two months late in making the agreed payment. The Ombudsman finds that these delays were fault on the part of the Council and that overall, that the Council's dealings with the Ombudsman's office were inadequate.
6. The Ombudsman finds that the Council did not honour its previous agreement with Mr B and the Ombudsman in this regard, and concludes that the Council's failure to provide the agreed remedy, which caused Mr B to go to additional time and trouble making the second complaint, was injustice. He recommends a further apology and a further payment of £250 to remedy this. The full report is appended to this report and has been published on the Ombudsman website.
7. Surrey County Council has an existing process for managing Ombudsman enquiries and complaints. For the majority of cases, this process results in accurate, timely and effective responses. However, the Service has acknowledged that in this case, these processes were not followed. There was not a sufficient level of oversight with regard to managing the timescales for implementing the remedies proposed by the Ombudsman.

8. Due to the complexity of the situation and the period of time that had passed (the original concerns were raised in 2016), it is evident that this enquiry would have benefited from a more experienced officer overseeing the process for this complaint. This would have supported with ensuring the Ombudsman's enquiries were responded to accurately and in a timely manner.
9. In line with the recommendations from the Ombudsman, the Service has initiated a plan to align its processes with the corporate processes, to provide a consistently high standard of response to Ombudsman enquiries.
10. C's current education is in a specialised provision tailored to his needs. He has received additional occupational therapy sessions to catch up on missed provision, and it has been assessed that the effect on his speech and language from his time out of school is unlikely to have been adverse. The Ombudsman has acknowledged that the Council's position is based on an understanding of C's needs and appropriate professional judgments, and does not consider that any more need be done in terms of assessing the impact of any previous shortfall in C's educational provision.
11. In relation to whether any other children affected by problems with the Council's provision needed extra occupational therapy, the Ombudsman acknowledged the Council had already taken remedial action by implementing a recovery plan in April 2017. This included a risk assessment for each child, updates and the use of locums to provide occupational therapy. The Council established in March 2018 that all provision was up to date. The Ombudsman does not consider that the Council needs to do more on this point.
12. In accordance with statutory requirements on this matter, Surrey County Council placed notices in the *Surrey Mirror* (22 November 2018) & the *Surrey Advertiser* (23 November 2018).

CONSULTATION:

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

RISK MANAGEMENT AND IMPLICATIONS:

14. The LGO findings highlight service failures that caused injustice to a vulnerable child and his family. An action plan is now in place to provide a consistently high standard of response to enquiries from the Ombudsman.

Financial and Value for Money Implications

15. The Council has paid I of £3,700 compensation to the complainants as recommended by the Ombudsman, and will make payment of a further £250 immediately after this meeting.

Section 151 Officer Commentary

16. The Section 151 Officer confirms that there are no material financial implications regarding the matters raised in this paper.

Legal Implications – Monitoring Officer

17. The Local Government and Housing Act 1989 places a duty on the Monitoring Officer to report the Ombudsman's findings to the Cabinet and draw her report to the attention of each Member of the Council.
18. 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 a council's response he can publish a further report and can compel an Authority to publicise his 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

19. The Council has to 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 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. 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 on their families.

Corporate Parenting/Looked After Children implications

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

Safeguarding responsibilities for vulnerable children and adults implications

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

Public Health implications

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

Climate change/carbon emissions implications

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

WHAT HAPPENS NEXT:

24. A report of the Cabinet's response to the Ombudsman's recommendations will be produced and sent to all Members and to the Ombudsman.

25. The matter will be reported to the Council for it to note.

Contact Officer:

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Consulted:

See paragraph 12 above

Informed:

See paragraph 12 above

Annexes

Annex 1- Report of the Local Government Ombudsman no 18 005 5

Sources/background papers:

Report of the Local Government Ombudsman no 18 005 543

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