

**SURREY COUNTY COUNCIL  
CABINET**



**DATE:** 30 APRIL 2019

**REPORT OF:** MRS JULIE ILES, CABINET MEMBER FOR ALL-AGE LEARNING

**LEAD OFFICER:** GEOFF WILD, DIRECTOR OF LAW AND GOVERNANCE & DAVE HILL, EXECUTIVE DIRECTOR FOR CHILDREN, FAMILIES, LIFELONG LEARNING AND CULTURE

**COMMUNITY VISION OUTCOME:** PEOPLE

**SUBJECT:** LOCAL GOVERNMENT AND SOCIAL CARE 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.

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 Council has accepted the recommendations of the Ombudsman. The Council will pay a total of £3750 for missed provision and time and trouble for the complainant in pursuing the complaint. It will also apologise to the family for the delay in issuing the Education, Health and Care Plan (EHC Plan), and for the lack of communication during this period. Training will be delivered for special educational needs (SEN) staff to prevent a recurrence of the fault found by the Ombudsman and to make sure another family does not have the same experience.

**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 his 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.

**DETAILS:**

1. The Local Government and Social Care Ombudsman has investigated a complaint made by parents of a child with special educational needs. A report into the investigation was published on 27 March 2019. The identity of the family in question is not made publicly available and the Ombudsman refers to the parent as 'Mr X' in his report, and his son as 'Y'.
2. The family had made a previous complaint to the Ombudsman in November 2015 about home-to-school transport, where fault was found. Whilst the council did not agree with all of the findings of that investigation, it agreed to the Ombudsman's recommendations to draw matters to a close.
3. The council carried out an annual review of Y's EHC Plan on 25 June 2015. Although the Council agreed Y's EHC Plan needed to be amended, it did not issue a draft amended EHC Plan until January 2017. The Ombudsman finds that this delay meant that Y received the provision he needed 15 months later than he otherwise would have done.
4. Mr X raised an issue regarding missing occupational therapy (OT) sessions during a meeting on 11 September 2015, with a further email on 7 February 2016. The Council claimed that it did not know about the missing OT until March 2016; however it should have been aware from when the matter was raised by Mr X on 11 September 2015. The Ombudsman acknowledges the council agreed to make up the OT sessions, in line with professional advice, and does not consider this fault. However, he considers that Mr X experienced injustice in the form of time in pursuing this matter, and finds the council at fault in this regard.
5. The council also attempted to put in place measures to manage Mr X's communication with officers. The Ombudsman considers that Mr X was justified in chasing the council, which was at fault for seeking to restrict his communication.
6. Surrey County Council has existing guidance for identifying and managing unreasonable customer behaviours. The Service has acknowledged that had this guidance been consulted, it would have been evident that Mr X's communications about his son's needs were not unreasonable and did not warrant action to manage his contact with the council.
7. Whilst SEN Staff are aware of statutory timescales regarding the annual review process, it is evident that the usual processes were not followed in a timely manner. While officers were of the view that Y was not disadvantaged by the delay because he was in a specialist school, the Ombudsman does not agree. In line with the recommendations made by the Ombudsman, the Service has arranged training for special educational needs (SEN) staff to prevent a recurrence of the issues highlighted within the report. In particular, that attending a specialist school does not

automatically meet a child's SEN when the EHC Plan is out of date and that amendments must be made in line with statutory timescales.

8. Y's current education is in a specialised provision tailored to his needs. Y's EHC Plan includes a specialist programme for his autism, extra speech and language therapy (SALT) and extra occupational therapy (OT). Therefore, his needs are being met and the service will continue to make sure this is the case.
9. This complaint dates back to events that took place in 2015 and 2016. While improvements to practice have taken place since then, the Service is aware that further improvement is required, and has undertaken an extensive consultation on its SEND Strategy with Surrey residents and partners. The feedback will be used to help shape our SEND Teams and the way they engage with families moving forward.
10. In accordance with statutory requirements, Surrey County Council placed notices about the Ombudsman's public report in the *Surrey Mirror* (4 April 2019) and the *Surrey Advertiser* (5 April 2019).

#### **CONSULTATION:**

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

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

12. 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**

13. The Council will pay £3750 to the family as recommended by the Ombudsman.

#### **SECTION 151 OFFICER COMMENTARY**

14. The Section 151 Officer confirms that the payment to the family can be met from existing budgets. There are no further material financial implications regarding the matters raised in this paper.

#### **LEGAL IMPLICATIONS – MONITORING OFFICER**

15. 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.
16. 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**

17. 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 their families.

**WHAT HAPPENS NEXT:**

18. An apology letter will be sent to the family on 1 May 2019 and the recommended financial redress payment will be paid.
19. Training undertaken for SEN staff will be completed by 3 May 2019.
20. A report of the Cabinet's response to the Ombudsman's recommendations will be produced and sent to all Members and to the Ombudsman.
21. The matter will be reported to the council for it to note.

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**Consulted:**

See paragraph 10 above.

**Annexes**

Annex 1- Report of the Local Government Ombudsman - Reference number: 18 005 886

**Sources/background papers:**

Report of the Local Government and Social Care Ombudsman (Reference number: 18 005 886)

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