

Local Government Ombudsman (LGO) Complaint Findings

Cabinet Member:

Division and Local Member:

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1. Summary

- 1.1. The Local Government Ombudsman has requested that Full Council notes its findings into a complaint involving a young man with special educational needs and the Council's fault in not providing appropriate therapy. The Council has accepted the findings. This report gives insight into the case and highlights the learning for the Council and the changes in processes and procedures that should prevent further similar cases arising.

Background

The Local Government Ombudsman (LGO) independently and impartially investigates complaints. His aim is to resolve disputes about councils and other bodies by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Each case that comes to the Ombudsman is different and it takes the individual needs and circumstances of the person complaining into account when making recommendations to remedy injustice.

The LGO has no legal power to force councils to follow recommendations. The main areas of redress it asks councils to acknowledge are to:

- Apologise
- Financial remedy
- Improve its procedures so similar problems don't happen again.

- 1.2. The LGO as part of an investigation has recommended Full Council to be aware of the following complaint and the actions the Council has agreed to undertake.
- 1.3. The aim of a Special Educational Needs (SEN) Statement (being replaced Education Health & Care Plans (EHCP)) is to make sure that the child gets the right support to enable them to make progress in school. A Statement (or EHCP) is normally made when all the educational provision required to meet a child's needs cannot reasonably be met by the resources within a child's school. In addition to 'education' resources the Statement (& EHCP) is also required to cover 'health' and 'care' services necessary for a child's educational progress, where services are not being provided by the NHS or other agencies.

1.4 Special educational needs background and complaint

Mr & Mrs X's son, Y, is disabled and has special educational needs. The Council has identified that he experiences significant difficulties due to his severe and complex speech, language, communication, sensory and physical needs and associated developmental delay. He attends a Local Authority special school.

The LA failed to commission or provide therapy for Child Y's needs as detailed in his statutory plan (Statement), specifically his speech and language needs, and his occupational therapy needs. Due to this failure to offer the necessary therapies, Child Y's special educational needs provision was disrupted. During this time he lost a term and a half of therapy. The LGO found this to be a significant injustice to a child with significant additional needs and special educational needs.

From February 2016 the LGO found the Council again failed to ensure that Child Y received the provision detailed in Part 3 of his Statement. From February 2016 Child Y should have received one hour a week of direct support from a Speech and Language Therapist and one hour a week direct support from an Occupational Therapist. The annual review of Child Y's learning took place in April 2016, and this provided evidence that the lack of therapy provision had impacted on his learning and friendship groups.

Mr & Mrs X complained the Council failed to ensure their son received the required therapy. They say this has caused their son a significant disadvantage. It has also caused them additional frustration as they complained to the Ombudsman about a similar fault in 2015 and their complaint was upheld.

2. Recommendations

2.1. Council to note the LGO Recommendations

To remedy the injustice caused, the LGO recommends the Council:

1. Apologises to Mr & Mrs X for failing to meet its statutory obligations with regard to therapies specified in their son's Statement
2. Pays Mr & Mrs X £300 for the time and trouble of bringing the complaint to the Ombudsman again when they could reasonably have expected the matters to have been resolved by their previous complaint to us
3. Pays Mr & Mrs X £1000 for them to use for Y's educational benefit for the disruption to his special educational needs support and the cumulative detrimental effect this is likely to have had on him given the findings in this case and the previous case
4. Keeps a clear record of the number of sessions Y has missed with the Speech and Language Therapist and the Occupational Therapist from February to July 2016. Also to record the number of additional sessions he has since received to make up for that loss so this can be audited and updated until all the additional sessions have been provided
5. Produces an action plan of how it will monitor whether it has received Annual Review reports from schools within the timescales set out in the Council's policy and how it can enforce this

6. Addresses as a priority the lack of commissioning expertise and puts in place a clear action plan to establish good practice, achievable outcomes and a robust short, medium and long term commissioning strategy
7. Produces an action plan against practical targets, not just a series of meetings, to ensure therapies are provided as soon as possible, before any new commissioning arrangement post 2017. The Council should report its progress against this action plan to the LGO every two months until the issue is resolved;
8. Considers complaints from other families that arise as a result of the issues highlighted in our report and takes appropriate action to remedy any injustice the families have been caused. If those people remain dissatisfied the Council should ensure they are signposted to the Ombudsman

2.2. The Council has accepted the LGO's recommendations.

3. Implications

3.1. As a result of the findings from the LGO's report, the Authority has ensured that the Speech and Language and Occupational Therapy is in place, and missed sessions are being caught up to ensure Child Y has received his entitlement.

Number of hours of therapy required to be delivered to make up for lost provision.

	March 18th 2017	June 20 th 2017	
Occupational Therapy	17 hours	11 hours	Remaining hours will be delivered up to half term and during the summer holidays
Speech and Language Therapy.	5.5 hours	1.5 hours	Will be completed by the end of term

3.2. As a result of the LGO's report the Authority has changed the way Annual Reviews are recorded, addressed the back log of recording and is improving the reporting and tracking of Annual Review information. This will enable the Authority to identify where pupils are not making expected progress, and investigate possible reasons for this.

3.3. The Authority has increased its commissioning capacity and has recently appointed a Commissioner for Special Educational Needs & Disabilities. This post will link closely with the Clinical Commissioning Group, the SEND service and education sector to ensure a more coherent and joined up approach is in place so that appropriate interventions are in place for families to support an assessment and EHC plan. The SEND Joint Commissioning Group is actively working to ensure joint arrangements are in place and commissioning of therapies is a priority across education, health and care.

3.4. The Authority has commissioned Occupational Therapy, Physiotherapy and SALT for 6 children since June 2016. We have also provided intensive interactive therapy for an additional child.

There has been one complaint regarding lack of therapy since the LGO's investigation. In this case the SALT provision was delivered by the Teaching

Assistant at the school and overseen by the therapist. The therapist who reviewed the child and wrote a report (March 2017) resigned from the case and a new therapist is now being sought. Meanwhile the child is continuing to receive their SALT therapy from the TAs at the school as planned. The Authority has liaised with and visited the school and is confident that the therapy is being delivered and all sessions recorded well.

- 3.5. Overall the Special Educational Needs Team has improved the processes to ensure that the provision specified in the Education Health and Care Plan is being delivered. They have also developed systems that assess whether this is proving effective. This will be monitored through the annual review process, and recorded on the child or young person's file.

4. Background papers

- 4.1. LGO's report