
Local Government and Social Care Ombudsman

Executive Member(s): Cllr Heather Shearer, Lead Member for Children, Families and Education

Local Member(s) and Division(s) affected: All

Executive Director: Claire Winter, Executive Director - Children, Families and Education

Executive Summary

Two public reports have been made by the Local Government and Social Care Ombudsman in relation to Special Educational Needs and Disability (SEND) complaint cases (LGSCO references 23 017 883 and 24 003 239) and this report shares the specific cases and proposes mitigations.

Recommendations

1. Accepts the findings of the LGSCO reports and agrees to implement the recommendations set out in those reports;
2. Notes and approves implementation of the improvement actions set out in paragraph 8 of this report

Reasons for Proposals

The Local Government and Social Care Ombudsman investigated complaints raised by two parents in relation to services provided by Somerset SEND for their children. The Ombudsman found fault on the part of the council and, as part of their report recommendations, required that the council should consider both reports at its full council, Cabinet or other appropriately delegated committee of elected members and confirm the action it has taken or proposes to take. The council will be required to provide evidence of this action within 3 months of their reports.

Report Author: Amelia Walker, Service Director Education

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Main report and supporting information

Background and purpose of report

1. The Ombudsman, in investigating two SEND complaints, found fault in the actions of the council and decided that a public report should be issued in relation to both cases. There are a number of recommendations included in the reports with which the council will comply.
2. One of the recommendations is that the reports should be considered by full council, Cabinet or another appropriate committee. The Chief Executive has judged that both reports should be brought to and discussed by the Council Executive. This action is required within a three-month period of the issue of the final reports (before 7th April 2025). Evidence that the reports have been considered at a committee must be shared with the Ombudsman in a timely manner (via the Customer Experience Team).

SEND pressures and strategic approach

3. The SEND system nationally is under extreme pressure. The financial and operational pressures have been reported on by the Public Accounts Committee, the National Audit Office, CIPFA and the Local Government Association, and all agencies have concluded that urgent action by central government is essential. The social context that lies behind the pressure has been identified as a global pattern linked to neurodiversity.
4. At a local level, these pressures have manifested in dramatically rising dysregulation (where children express their distress through uncontrolled emotional or behavioural responses) in the classroom, a phenomenon that mainstream schools are not equipped to support, state-funded special schools have too few places to accommodate, and where the response from the independent sector is being charged at excessive rates.
5. The full scale of this crisis has taken time for all affected organisations to comprehend. In the interim, standards within council teams have fallen in some key areas. A new SEND Action Plan was agreed with NHS and other partners in January 2025 to provide sharp focus on areas where change is needed.
6. In relation to the overall strategy, a revised Deficit Management Plan is being drafted and is intended to come for Executive decision shortly. This latest plan is intended to be a genuinely strategic look at the council's transformation vision for SEND, raising the level of ambition and pace at which the challenges can be met.
- 7.

Improvements relevant to these complaints

8. The two complaints in question span a significant period of time. One complaint relates to the academic year 2022/23 and was resolved in August 2024. The second complaint relates to issues between November 2023 and is subject to ongoing legal proceedings, however the local authority has agreed to reverse the specific decision in relation to direct payments that was challenged. The current recommendations within the public interest reports that relate to the complainants have been actioned, where the deadline has now passed. While the Ombudsman regularly reviews complaints about the service and sets recommendations, these are the only public interest reports relating to the service that have come forward in recent years.
9. In relation to the specific issues raised by these complaints, the service has identified six critical areas for improvement:

Issue	Impact	Mitigation
Capacity to focus	The escalating crisis in SEND has overwhelmed the ability of the statutory SEND team to manage their current wide responsibilities for operations, improvement, strategic planning and disputes resolution.	The restructure of Education services reduces the breadth of responsibilities where they are currently unworkable, including creation of a new disputes team.
Systems and process	Management information and case tracking systems and processes are insufficiently robust, but the team has no spare capacity for improvement work due to operational demands.	Additional capacity has been reallocated from other areas of the service, deploying staff members who have successively tackled similar procedural challenges in other areas,
Ombudsman relationship	Due to the high level of interactions, actions and reporting requirements set by the Ombudsman's office were overlapping and uncoordinated.	Agreement has been secured with LGSCO to regular reporting against the SEND Action Plan, avoiding creation of discrete action plans and commensurate risk of non-compliance.
Direct payments	The policy is out of date and practice across council teams no longer accords with published policy.	The policy is being reviewed and rewritten and practice brought into alignment.
Speech and Language Therapy	Lack of access to therapies has resulted in reduced ability to meet demand. The Joint Strategic Needs Assessment for SEND dates from 2022 and has not been updated.	A new contract has been signed with the NHS for provision of therapy. Business Intelligence has committed to support an agile approach to analysis to

		support commissioning needs.
Council-wide ownership	The 'rising tide' crisis in SEND has resulted in services increasingly focused on managing frontline crisis, reducing the ability of the service to bring forward strategic challenges, decisions and analysis to decision-makers.	External capacity has been contracted which is delivering effective support in the development of business cases and decision papers to enable strategic leaders to drive forward transformation.

Links to Council Plan and Medium-Term Financial Plan

10. The Council Plan commits to creating a Fairer, Ambitious Somerset where strong educational opportunities support children's life chances. At present, the national crisis in SEND services has impacted negatively for some children and families, as well as creating untenable pressures on council teams. The High Needs budget is very overspent, and this could have a critical impact on Council's financial position should the statutory override that currently keeps this overspend from consideration for Section 114 purposes be lifted by government. Identifying areas to improve practice is essential to remedy these pressures.

Other options considered

11. No other options are appropriate – this report is a LGSCO requirement.

Key considerations for the Council

Scrutiny comments / recommendations:

12. A report on the SEND crisis and the council's Dedicated Schools Grant Deficit Management Plan (DMP) was presented to Children and Families Scrutiny on 10 February 2025. The Committee acknowledged the work done to date, expressed concern at the heightened level of risk and demand, requested a briefing for all councillors on the issues raised, and requested a further report to the Committee in May on the forthcoming revision to the DMP.

Consultation and feedback

13. The local authority's strategic approach to SEND services has been subject to extensive consultation over many years. In addition, in the past year the Education Service has conducted:

- Face to face consultation exercises with headteachers of state-funded schools
- Online consultation with representatives of the Early Years sector

- A six-week formal public consultation on funding and provision for children with additional needs
- Face to face and online consultation with parents of children with SEND

14. The outcomes of this consultation activity will be reported in full to the Executive as part of the forthcoming revision of the DMP.

Financial and Risk Implications

15. Services that support children with SEND are funded from the High Needs block of the Dedicated Schools Grant. The 2024/25 High Needs budget is consistent with the Deficit Management Plan (DMP) which was submitted to CIPFA and the DFE in February 2024.

16. The cumulative forecast deficit was £33.911m at the end of March 2024. The Q3 forecasted cumulative deficit as at 31 March 2025 was £65.211m

17. The statutory override has been extended to the end of March 2026. At this point, if there is no change to legislation or additional funding from government, the cumulative deficit will have to be funded by the Local Authority.

18. Specific risks identified:

Risk: demand increases above assumptions. Budgets for 2025/26 are being set based on a set of assumptions and forecast level of demand for high needs places and services based on 2024/25 expenditure and commitments. If demand exceeds the set of assumptions, the result will be a higher level of deficit.

Mitigation: monthly monitoring and forecasting is in place. Mitigations have been delivered as set out the current Deficit Management Plan however, agreed mitigations to date have not yet reversed the trajectory of escalation. A revised Deficit Management Plan is therefore under development and will be subject to Executive decision-making in spring 2025.

Current Risk Score:

Likelihood	5	Impact	5	Risk Score	25
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Projected risk score if recommended actions are agreed and delivered:

Likelihood	4	Impact	4	Risk Score	16
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Legal and Procurement Implications

19. The oversight of the LGSCO is a statutory accountability mechanism. While the Ombudsman is not judicial body and the recommendations from the office are not legally binding on local authorities, judicial review can be used to compel local authorities to implement them.

20. In order to provide greater assurance of compliance, the Education service met with the relevant Assistant Ombudsman in November 2024 and shared the new SEND Action Plan, which includes actions that support improvement in the thematic areas the LGSCO has identified as arising for Somerset in recent complaints. The Assistant Ombudsman acknowledged that past requests for actions plans from their office had not been coordinated and agreed therefore that Somerset reporting on a single action plan, with quarterly review, would provide more effective assurance.

HR / Workforce Implications

21. One of the primary factors identified as relevant in the Ombudsman cases is the acute pressures on the statutory SEND teams. The council is in the process of concluding a very large-scale reorganisation process. One of the key objectives of reorganising education teams is to remedy the service's inability to balance the competing aims of crisis management, complaint management and sufficiency planning. New teams and management arrangements should be an important mitigation for gaps and issues identified in these reports.

Equalities Implications

22. The delivery of Education, Health and Care Plans (EHCP's) is of direct concern to children with disabilities and their families. Where the system is underperforming, this disproportionately affects their experiences and therefore is a high priority for improvement.

Community Safety Implications

23. One of the consequences of pressures on statutory SEND teams is that capacity to undertake annual review tasks has been compromised. This was identified as a risk factor in the Joint Thematic Area Inspection of Serious Youth Violence. Increasing capacity to complete annual review activities is therefore a strategic priority.

Climate Change and Sustainability Implications

24. No implications have been identified.

Health and Safety Implications

25. Because of the acute insufficiency of placements for children with SEND, some children do not have access to school places ideally suited for their needs. In a small number of cases this has resulted in health and safety incidents for staff, where children with dysregulated behaviour have harmed members of staff. The council's health and safety reporting for LA maintained schools has been updated to include dysregulation as a dedicated reporting field to identify this risk, and incidents of this kind are not escalated into the appropriate internal risk assessment and action-planning group for resolution.

Health and Wellbeing Implications

26. One of the intended outcomes of EHCPs is to identify health and wellbeing needs at an early point and thereby secure better outcomes where these might be at risk. Where this system underperforms, partners are less likely to be able to deliver on their objectives and support children whose health or welfare is of concern.

Social Value

27. No implications have been identified.

Background Papers

28. Both LGSCO public reports are supplied

- a. Final Report 24 003 239
- b. Final Report 23 017 883

29. SEND Action Plan

Appendices




30. None

Report assurance

	Officer Name	Date Completed
Legal & Governance Implications	Jill Byron	18/02/25
Finance & Procurement	Nicola Hix	18/02/25
Workforce (*)	n/a	n/a
Asset Management (*)	n/a	n/a
Executive Director	Claire Winter	18/02/25
Executive Lead Member	Cllr Heather Shearer	17/02/25
Consulted:		
Local Division Members	n/a	
Opposition Spokesperson(s)	Cllr Frances Nicholson	17/02/25
Relevant Scrutiny Chair(s)	Cllr Leigh Redman	17/02/25

Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer or www.somerset.gov.uk/impactassessment

Organisation prepared for (mark as appropriate)	 Somerset Council	 NHS Somerset	 NHS Somerset NHS Foundation Trust
Version	1.0	Date Completed	13 February 2025
Description of what is being impact assessed			
In responding to the identified complaints, the following mitigating actions have been identified:			
Issue	Impact	Mitigation	
Capacity to focus	The escalating crisis in SEND has overwhelmed the ability of the statutory SEND team to manage their current wide responsibilities for operations, improvement, strategic planning and disputes resolution.	The restructure of Education services reduces the breadth of responsibilities where they are currently unworkable, including creation of a new disputes team.	
Systems and process	Management information and case tracking systems and processes are insufficiently robust, but the team has no spare capacity for improvement work due to operational demands.	Additional capacity has been reallocated from other areas of the service, deploying staff members who have successively tackled similar procedural challenges in other areas,	
Ombudsman relationship	Due to the high level of interactions, actions and reporting requirements set by the Ombudsman's office were overlapping and uncoordinated.	Agreement has been secured with LGSCO to regular reporting against the SEND Action Plan, avoiding creation of discrete action plans and commensurate risk of non-compliance.	

Direct payments	The policy is out of date and practice across council teams no longer accords with published policy.	The policy is being reviewed and rewritten and practice brought into alignment.
Speech and Language Therapy	Lack of access to therapies has resulted in reduced ability to meet demand. The Joint Strategic Needs Assessment for SEND dates from 2022 and has not been updated.	A new contract has been signed with the NHS for provision of therapy. Business Intelligence has committed to support an agile approach to analysis to support commissioning needs.
Council-wide ownership	The 'rising tide' crisis in SEND has resulted in services increasingly focused on managing frontline crisis, reducing the ability of the service to bring forward strategic challenges, decisions and analysis to decision-makers.	External capacity has been contracted which is delivering effective support in the development of business cases and decision papers to enable strategic leaders to drive forward transformation.

Evidence

What data/information have you used to assess how this policy/service might impact on protected groups? Sources such as the [Office of National Statistics](#), [Somerset Intelligence Partnership](#), [Somerset's Joint Strategic Needs Analysis \(JSNA\)](#), Staff and/ or [area profiles](#),, should be detailed here

Many parents have told us that their preferred goal is having their child attend a local mainstream school where their child flourishes and progresses. However, the ability of mainstream schools to provide for children with additional needs is coming under pressure.

When mainstream schools struggle or children's needs go unmet, this can result in a range of consequences:

- Some children respond to that situation with disruptive behaviour which can culminate in **suspension and exclusion**. In the latest national data, Somerset was had the third highest rate of exclusions for children with SEND and the second highest rate of suspensions in England. Children excluded and suspended (from Somerset state-funded schools): 147 pupils were permanently excluded in 2023/24 (of which 83 had identified SEND); 3,522 individual pupils received one or more suspension during 2023/24 (of which 1,658 had identified SEND). [Special educational needs in England, Academic year 2023/24 - Explore education statistics - GOV.UK \(explore-education-statistics.service.gov.uk\)](#).

- Some children have their place in school break down, and this results in them being placed in an **independent special school** at comparatively high cost. The average annual cost for an independent special school placement is more than 10 times higher than for a mainstream school. Somerset's budget for independent special school's places is £20m higher than its budget for mainstream school support. There are 12,912 pupils in state-funded schools and 2,497 pupils in independent schools (Source is DfE/school censuses, Jan 2024) Children in INMS (with an EHCP maintained by Somerset LA): 409. (Source is SEN2 data national return, January 2024. [Education, health and care plans, Reporting year 2024 - Explore education statistics - GOV.UK \(explore-education-statistics.service.gov.uk\)](#))
- Some children are **taken out of school** because their needs are not being met and either try and educate them at home or the child access something called 'Education Otherwise than at School'. However, this can put significant pressure on families and sometimes these arrangements are not successful. Children in EHE: 1,786. *Source is Capita One, as at end August 2024.* [EHE Current \(Dashboard\) - SQL Server 2017 Reporting Services \(somerset.gov.uk\)](#) (Internal)
- Some children feel so anxious or unwell at the prospect of attending school that they experience **severe non-attendance**. Somerset has seen a 22.6% increase in pupils severely absent from school since 2022. There were 7,452 children of compulsory school age (NCY 1 to 11) with 15 or more days illness absence during 2023/24, of which 2,147 had identified SEND. *Source is Capita One, not currently published.*
- When children are not in full-time education this can put extreme pressure on parents' employment, such that too many parents have felt **forced to leave employment** in order to ensure that their child is safe and supervised. There are currently around 60,000 people of working age in Somerset who are classed as 'economically inactive' because they are not seeking employment.
- Some children end up **taken into care** because the pressure on families of not having a successful full-time school place becomes so great that the family no longer feels able to care for their child. Somerset's children social care budget in 2023/24 was overspent by £11.9m.
- Some schools can get into serious difficulties and underperformance because of the challenges involved in meeting the breadth of need within the school. The proportion of **schools judged inadequate** by Ofsted in Somerset is above the national average.

In the school system, we know how many children have diagnosed disability and SEND. As at August 2024, there were 5,557 children with EHCPs maintained by Somerset LA (Children's Performance Scorecard, August 2024 [Children's Performance Dashboard - Power BI](#) (internal)). However, the evidence of the impacts above is that there are likely far more children with conditions, needs and disabilities than have been identified or diagnosed. Any situation where there are significant impacts may be an indicator of disability and should be treated as such.

Who have you consulted with to assess possible impact on protected groups and what have they told you? If you have not consulted other people, please explain why?

During summer term 24/25 consultations were undertaken on reforming SEND services in Somerset. Four sessions were held with school leaders and Somerset Parent Carer Forum hosted a consultation event with parents. Extensive consultation was undertaken with children and young people in the context of a new Children and Young People's Plan. As part of these consultations, we heard that:

-67% of school leaders supported our proposals for change to the SEND system

-37% of school leaders agreed that there are too many children who are 'stuck' right now without satisfactory solutions or progress, this has been going on a long time and resolving these hard cases is an immediate priority that can't wait.

-43% of school leaders agreed that it feels too hard and takes too long to get children's needs assessed and funded

-62% of school leaders agreed that specialist support from the LA is valued, but it can be too complicated or too expensive to access. The challenges being faced by some schools are so great that the help on offer is too limited or too slow to have a real impact

-61% of school leaders agreed that professionals and parents are carrying too much knowledge of risk to children that is not being acted on. The way we share this knowledge is too complicated and no one in the system seems to have an overview of where risk is the greatest.

-48% of school leaders agreed that early identification of social need is not resulting in long term impact. PRU's (Pupil Referral Units) are facing numerous pressures which are restricting their ability to do their job. This is no clearly identified budget for preventing exclusion work and thresholds for help with social need feel high.

-44% of school leaders agreed it can be hard to get a response from LA staff and it would be positive if LA staff could be located on school sites. Some difficult decisions can only be made by schools, but they need more options and advice from specialists when they do so.

-We met with focus groups of parents and carers to discuss their experiences. They described a range of issues in the system including:

- Mainstream schools should have been able to support their children, but because the school couldn't find a way to do what was needed, the relationship broke down
- It can be too difficult to get support for whole school changes, such as training all teachers on specific conditions
- Getting an EHCP takes too long and trying to get a special school place can feel like a battle
- Some children's education is now costing the LA a lot of money, but it didn't have to be that way because their child should have been able to succeed in their mainstream school

-Over 6,000 children and young people were asked for their views on what was important, including 14 focus groups, and they said what mattered to them was:

- **Children and young people have asked that schools, colleges and education help students to feel more included and supported.** They told us that in order to improve attendance and attainment there should be less disruptive behaviour in classrooms and quiet spaces in schools and colleges.
- **Children and young people want to be supported to lead healthier lives in Somerset.** They told us that they need better access to healthy sport and leisure activities, advice and improved communication and contact with health professionals.
- **Children and young people want support to lead happy lives and help in their schools, colleges and communities if their mental health deteriorates.** They told us that they need better support for self-injury, better training of staff in schools and colleges and faster referrals and access to the right support.
- **Children and young people have told us that they want to live in safe communities where streets and parks feel safe at night.** They told us that they want fewer children and young people involved in county lines and fewer incidents of violence.
- **Children and young people want support to build better connections with their families, friends and relationships.** They told us that they need to know what's available in their local communities to meet and make new friends; and where to get advice on relationships and sexual health.
- **Children and young people told us that they need cradle to career support to become independent and prepared for adulthood.** They want life skills to be taught in schools and colleges and help to find jobs, apprenticeships and supported employment.

-In September 2024 the Council undertook a formal consultation on *Funding and provision for children with additional needs*. Responses to the consultation were strongly in support of proposals. A formal report on the consultation and proposals for further action are under development and will be brought forward for decision to the Council Executive in spring 2025.

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Age	<ul style="list-style-type: none"> None identified 	☐	☐	☐
Disability	<ul style="list-style-type: none"> The SEND Action plan has been explicitly designed to support an overall strategy to tackle spiralling demand and improve outcomes for children with SEN and disabilities and their families, which are of concern in relation to exclusion, placement breakdown, conflict scenarios and educational underachievement. New roles and team structures have changed to reduce pressure on local authority budgets but in such a way as to avoid negative impact on ability to deliver for children. Due regard to equalities impacts will be given to transformation activities that change existing policy and practice. 	☐	☐	☒
Gender reassignment	<ul style="list-style-type: none"> None identified 	☐	☐	☐

Marriage and civil partnership	<ul style="list-style-type: none"> • None identified 	□	□	□
Pregnancy and maternity	<ul style="list-style-type: none"> • None identified 	□	□	□
Race and ethnicity	<ul style="list-style-type: none"> • None identified 	□	□	□
Religion or belief	<ul style="list-style-type: none"> • None identified 	□	□	□
Sex	<ul style="list-style-type: none"> • It is very difficult to ascertain this with available assessments and data, but there is a likelihood that the impact of SEND not being appropriately identified and needs met manifests in different impacts for girls and boys. Evidence suggests that boys are more likely to exhibit externalised anxiety and girls internalised. This can result in gender disparities in different groups, for example higher proportions of boys in groups where there is behaviour that challenges (exclusion, suspension and SEMH) and higher proportions of girls where there is internally directed harm (mental health, emotionally based school avoidance and self-harm). These proposals are intended to 	□	□	☒

	bring all these impacts into a single system with the aim of achieving more positive impacts for both groups.			
Sexual orientation	<ul style="list-style-type: none"> None identified 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Armed Forces (including serving personnel, families and veterans)	<ul style="list-style-type: none"> None identified 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, e.g. carers, low income, rurality/isolation, etc.	<ul style="list-style-type: none"> None identified 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Negative outcomes action plan

Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
Transformation programme activities to be subject to EIA at point of decision, and where substantive changes are agreed	30/04/2025	Amelia Walker	Through SEND Partnership and Council governance process	<input type="checkbox"/>

	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
If negative impacts remain, please provide an explanation below.				
Completed by:	Amelia Walker			
Date	13/02/25			
Signed off by:	Amelia Walker			
Date	13/02/25			
Equality Lead sign off name:	Tom Rutland			
Equality Lead sign off date:	17/02/2025			
To be reviewed by: (officer name)	Amelia Walker			
Review date:	31 December 2025			