

Children, Families and Skills Scrutiny Committee
Meeting to be held on 9 September 2024

Electoral Division affected:
(All Divisions);

Corporate Priorities:
Supporting economic growth;
Caring for the vulnerable

**Update from the Service from the Local Government and Social Care
Ombudsman Report**

Contact for further information:

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Brief Summary

This report explains in more detail the findings of the Local Government and Social Care Ombudsman report and the actions the service is taking as a result of the report.

Recommendation

The Children, Families and Skills Scrutiny Committee is asked to:

- i. Reflect on the information provided; and
- ii. Consider ways to further support work in this area.

Details

On 21st April 2024 the Local Government and Social Care Ombudsman upheld a complaint regarding the delayed issuing of a child's Education, Health and Care Plan (EHCP), which impacted on their mental health. One of the actions of the Ombudsman was to share the outcome with the relevant Scrutiny committee. The full decision from the Ombudsman was brought to the Committee at its meeting on 15th May 2024, and can also be found here:

<https://www.lgo.org.uk/decisions/education/special-educational-needs/23-012-082>.

The main findings were as follows with further clarity from the service provided as a response to each individual finding:



Finding: The Council has accepted that it failed to issue a final EHC Plan following the annual review in January 2022. This is despite the Council informing Mrs B that it would amend the Plan and that it had issued a draft. This caused significant distress and uncertainty for Z and Mrs B. The fault here is particularly serious and had significant consequences because Z was moving to sixth form, and the law places additional duties on councils to make sure that this is well planned and that a final EHC Plan that reflects post-16 education is in place by the end of March before the child finishes secondary school.

Response: A draft plan was issued by March 22, but this was not converted into a final plan. There was not proper oversight of the caseload of the SEND case manager that left. This case should have been redesignated to another worker to pick up. If this had happened on time, there would have been no further issues. Our new structures now allow us to have proper oversight of the work that is being completed and whether there is drift and delay in cases. SEND staffing remains an issue due to heavy workloads and a backlog of cases.

Finding: There was further fault by the Council when it left it until August to consider Z's place in sixth form and telephoned Mrs B to say this had not been agreed just a week before he was due back. Z's EHC Plan, and the subsequent annual reviews, make clear that he needs a stable educational environment. The lack of planning caused Z and Mrs B deep distress as they had to then consider a new school, in mainstream education, when he had been at the special school for many years.

Response: This should not have happened. All avenues should have been explored and conversations with his current special school agreed before communicating this with the family. This caused undue stress. Our new processes now allow greater oversight of cases and our decision making is improving.

Finding: The Council also failed to issue its decision to cease, amend or maintain the Plan, following the annual review in January 2023. It has not issued a draft or final Plan. The Council's failure to issue a Plan far exceeds the statutory timeframes, being two years overdue. Z's special educational provision set out in his Plan is several years out of date, and the Council cannot say that this meets his current needs. We know the Council has intended for some time to amend Z's EHC Plan and so it is likely that his current provision is not meeting his needs. The Council's shortcomings have caused Z and Mrs B significant uncertainty, distress, and frustration. Also, as the Council has not issued a final Plan, Mrs B has not been able to appeal to a Tribunal to get the Plan updated. We cannot say that any lack of provision is directly responsible for Z reducing his exam courses. However, again, the Council's failings have meant that Mrs B is uncertain as to whether had the support been in place, her son would have been able to stay on the A-level courses he had chosen.

Response: By failing to have his EHCP confirmed in March 22, the normal transitional arrangements did not take place for this student. This may have impacted on his outcomes. We have increased the number of staff in our SEND teams and our oversight of this work is improving. There is still a considerable



backlog of reviews and EHC plan assessments, but we are working through these as quickly as we can.

Finding: The Council says it did not have the staff to complete all the reviews necessary. It has told me that the officer responsible for Z's case no longer works for the Council. However, the severe delays show the Council did not have adequate monitoring to make sure it met its legal duties, and delays worsened.

Response: There should have been oversight of this case but the lack of capacity of staff is difficult. Further recruitment into the team has taken place and further recruitment continues to build the team so they do have the capacity to review, amend and issue plans in a timely manner. We still have significant delays, but we are working through a process to address these.

Finding: The Council failed to deal with Mrs B's complaints about the delays adequately. When she complained in September 2022, the Council said it would amend the Plan in discussion with her and issue the final Plan as soon as possible. The Council's file shows that it took no action. The Council failed to respond at all when Mrs B complained in July 2023. These failures in the complaint handling compounded the significant uncertainty and distress to Mrs B and Z and increased their frustration with the Council.

Response: Since this case, two complaints and correspondence officers have been appointed to ensure that complaints are dealt with in a timely way. We are working through the complaints as quickly as we can.

Finding: The Council can ask a school or college to review the EHC Plan on its behalf and this is what happened in this case. However, given the long delays, I would expect the Council to have considered attending the annual review meeting in December 2023.

Response: It would have been courteous to attend the review meeting in this case but due to the capacity of staff, they have been unable to attend review meetings. They are not required to do so as they form an administrative function and are not making any decisions regarding provision. Where cases are difficult we will now attend those cases.

Finding: In August 2023, as a result of a separate investigation, the Council agreed with the Ombudsman that it would improve its review procedure so that it met the statutory timescales. In October 2023, it adopted a recovery plan and has started to implement this. It has invested significantly to increase its resources in this area, and plans to restructure the service. As an interim measure it has recruited temporary staff to work through the backlog alongside the team. A Director for the service area holds weekly meetings to track the actions of the recovery plan. The Council tells me that as of March 2024 there are over 7,100 overdue EHC Plans. It cannot ascertain the longest overdue review.



Response: This is still the case and is largely due to the difficulties in recruiting enough educational psychologist capacity to process the applications. Even though we have recruited more case managers to ensure reviews are completed, queries answered etc, until we have more educational psychologists unfortunately there will be delays in issuing and reviewing plans.

Finding: I asked the Council about delays in responding to complaints about EHC Plan reviews. It acknowledges that it is taking too long to respond to these complaints and it currently has 160 overdue complaints relating to its Inclusion and Special Educational Needs and Disability Service (not all of these will be complaints about delays in the EHC Plan process). The Council reports monthly to its Chief Executive on overdue complaints, and this is shared with the Council's Lead Member for Education and Skills. The relevant Director within the Council is overseeing a working group to improve the collection, monitoring, and reporting of data about complaints. The Council has recruited a permanent officer for SEND communication, and temporary staff are supporting the officer to reduce the backlog. The Council is improving its communication with parents and carers with a dedicated helpline and is reviewing this to improve the helpline's effectiveness.

Response: There are currently 100 overdue complaints being dealt with by the team, so this is improving. We now have two staff to deal with these complaints and have a business case asking for more staff. There is a piece of work around the SEND Helpline to triage calls and make this more effective and helpful to parents. This should be complete by the end of September and improvements should be seen following this.



Consultations

N/A

Implications:

This item has the following implications, as indicated:

Legal

The SEND duties are absolute duties. We must follow them, as outlined in the Children and Families Act 2014 and the SEND Code of Practice 2015.

Financial

Sufficient funding must be available to discharge our duties, which are absolute duties.

Risk management

The risks related to SEND are detailed in our risk registers.

Local Government (Access to Information) Act 1985

List of Background Papers

None

Reason for inclusion in Part II, if appropriate

N/A

