

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINT – A BRIEFING FOR SCRUTINY

Report from the Head of Education and Learning

Recommendation: To consider if the actions taken following the Ombudsman complaint are proportionate to the case and ensure an appropriate level of learning in the service.

1. Background

Ms B complained that Devon County Council failed to provide her child with adequate education from the point at which she was due to transfer to post-16 education in September 2019. Specifically, she says we:

- a) Failed to provide the young person post-16 education from the beginning of term in September 2019.
- b) Failed to ensure the provision detailed in their Education, Health and Care Plan was in place when it did put education in place.
- c) Failed to make sure they were provided with sufficient help and services to enable them to catch up for the period of education they missed after they began receiving education.
- d) Continued to fail to provide the support detailed in the young person's Education, Health and Care Plan up to the point Ms B complained to the Ombudsman.
- e) Failed to consider Ms B's complaint at Stage Two of the Council's complaints procedure telling her that the second stage of that procedure was scrapped in March 2020.

Ms B explained that because of the above failings her child missed out on educational provision and specialist support for her special educational needs. In addition, Ms B says that because her child was not in education, she stopped receiving tax credits and this caused her unnecessary financial hardship. Ms B says that both she and her child have been caused unnecessary stress as a result of the Council's actions.

2. LGSCO Complaint and Outcomes

Following investigation, the LGSCO made a number of recommendations. These were all accepted by the Council and are outlined below, along with the actions taken:

Recommendations:

- a) The Council must consider the report and confirm within three months the action it has taken or proposes to take.

On 4 March 2022, we indicated to the Ombudsman, in accordance with their request, our intention for the report to be considered at Scrutiny on 15 March 2022. This Scrutiny session is therefore the Council's opportunity to consider the report and the service's response. The actions, set out within this report have been taken or are planned to comply with the Ombudsman's recommendations. We also share within the paper the additional learning that we have identified for the service as a result of this public interest case.

- b) The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended).

A precedent is set to request that Scrutiny considers this report and the recommendations; all of which we are accepting. We are asking Scrutiny to consider whether the steps set out in response to each recommendation are proportionate and that you consider that an appropriate level of learning has been made by the service.

c) In order to recognise the injustice caused to Ms B and Ms M the Council should, within one month of the date of the final report:

- Apologise to both Ms B and Ms M for all the identified faults and the impact these have had on them both.
- Make a payment to Ms M of £3000 to recognise the impact of having no educational or special educational support between September 2019 and February 2020.
- Make a further payment of £1000 to Ms M to recognise the avoidable distress, lost opportunity, uncertainty and anxiety the Council's poor handling of her educational and special needs during the period covered by this complaint.
- Pay Ms B £500 to recognise the avoidable frustration and time and trouble she was caused in having to repeatedly chase the Council to arrange education for Ms M.
- Pay Ms B a further £100 to recognise the avoidable frustration caused by its refusal to complete its consideration of her complaint after offering to do so and before its complaints procedure changed.
- Pay Ms B the equivalent of the tax credits she lost upon Ms B providing the Council with evidence of the amount she lost.
- Pay Ms B a further £200 to recognise the avoidable anxiety and distress the additional financial worries resulting from the withdrawn tax credits caused her.
- Make a payment of £200 to recognise the lost opportunity to appeal against the failure to name post-16 provision in the Summer term of 2019.

We can confirm that we wrote a letter of apology to Ms B and Ms M on 22 February 2022. This was emailed out to Ms B and Ms M on 23 February. In this letter we confirmed that we would be in contact with Ms M and Ms B to request her bank details and we asked Ms B for evidence of the lost tax credits that we will pay to her. We have already processed the payment to Ms M but at the time of writing were still awaiting information from Ms B. Once the information is received, we will ensure that we do not hold up the remaining payments whilst we wait for the tax credit information. We are aware of a typo on our letter of 22 February where we incorrectly use the date 29 February 2022. I apologise for this oversight.

d) In order to ensure that similar faults do not occur in future the Council should, within three months of the date of the final report, provide us with evidence it has:

- Reviewed its procedures regarding post-16 education arrangements for young people with EHC Plans to ensure that the transfer process is started in time to name a placement by the end of March in the year of transfer.

Since 2019, Managers and Case Officers have undertaken legal training with regard to annual reviews and have linked with Department for Education (DfE) training that has been delivered. A plan has been developed to map actions with clear timescales to ensure Year 11 transfer plans are issued by 31st March.

In September 2020, the EHC Hub was introduced as our case management system for annual reviews. This system acts as an interactive portal that schools and professionals can access as well as the Special Educational Needs (SEN) team. Young people and their parents can also contribute towards and view the progress of a review through the portal. This system provides accurate data around the cohort of learners and the timescale for an individual case, enabling managers and case officers to monitor timescales.

Through our SENDCO networks, training is ongoing for schools around the process, content and importance of timeliness of annual reviews for this cohort. We are also working through our commissioned provider of independent careers advice for young

people with an EHC plan to ensure information around choices and options for post-16 is available to them, their family and the SEN team in a timely way. In addition, further capacity for the SEN team has been agreed and has been included in the budget for next year.

- Ensured its staff are adequately trained and understand the current processes around the transfer to post-16 education for children with EHC Plans.

We have training records in place for staff which records their training and these are being reviewed to ensure all staff have completed the training required. This has included national and regional training by the DfE and a legal firm. Further in-house training is scheduled to focus on specific aspects of the review process including decision-making and timeliness within the process. When the review is complete an appropriate training plan will be put in place.

- Ensured staff are aware that children do not have to apply for a place and that the Council must name a placement by 31 March of the year of transfer.

Staff are aware that a young person does not need to apply for a place at a college or provider as this aspect of the process is dealt with through the consultation with a provider. The phase transfer process is being discussed with Further Education (FE) colleges through the FE Forum. This will ensure both the SEN team staff and college/provider staff are clear on the processes involved, which will avoid ambiguity in the future. Young people are being encouraged to engage with the college around their choice of course. Staff are also aware that the Council must name placement by 31st March, and this may include type of placement.

- Taken steps to improve its record keeping to address the administrative failures identified in this case. Specifically, it should keep adequate records of emails and phone calls and of all letters and EHC Plans issued and of parental responses. It should provide us with details of how it will achieve this.

The introduction of the EHC Hub in September 2020 has improved record keeping and the transparency of the timeline in relation to individual cases. The timeline within the EHC Hub date stamps actions that have been taken and any action taken outside of the Hub, for example, a phone conversation can be noted. Decision letters issued through the Hub are visible within the system to parents and young people. They can be downloaded, with a copy of the letter retained within the system. As part of our ongoing improvement in communication with parents and young people, a new record keeping system is in place for telephone calls to the SEN team via our main phone line. Details of the caller and reason for call are recorded along with a record of resolution.

- Undertaken an audit of its handling of all post-16 transition arrangements for children with an EHC Plan for the last two years and advise this office how many of these were completed and a final amended EHC Plan issued naming a post-16 placement by 31 March of the relevant year. If it is failing to achieve this it should let us have details of how it will remedy this.

We have recruited additional SEND leadership capacity which will ensure robust oversight of post-16 transition. We are recruiting experienced staff to reduce the backlog of cases and improve our consistency in complying with the current legal requirement. We are working through the challenge of conducting the audit and will provide a further update to the Ombudsman in due course to comply with the actions to be completed within three months. We have prioritised audit on our improvement plan, this is a long-term strategic challenge.

There is current work on developing clarity on the choices and options available for post-16 learners.

The Council should also provide us with updated information about the educational and special needs support and provision it is making for Ms M and demonstrate this accords with her current EHC Plan.

We have received confirmation from Ms M that she has received our emails, although to-date we have had no further response in relation to her intentions with regard to her education. We will continue to reach out to Ms M and to seek Ms M consent to hold a review of the EHC plan.

3. Additional Learning

Additional learning has been taken from this complaint and is summarised below.

We have implemented some specific training and also focused on developing a restorative way of working young people and families. The new Director is setting clear expectations through leadership team meetings in order to ensure that expectations are clear and appropriately cascaded to all staff.

a) The importance of documentation and audit

The introduction of the hub has significantly helped in ensuring rigorous recording of communications. We are also addressing our audit processes to improve our practice.

b) The importance of proportionate independence when investigating complaints

We failed to remedy the issues raised in complaints within the newly implemented one stage local complaints process. We have therefore reinstated a two stage complaints process. We are sorry that this was not in place for Ms B.

If we had taken a more restorative approach this may have avoided the need for an Ombudsman investigation and public report. Such an approach is now informing our practice going forward.

c) The importance of communication

We now understand that we could have done more to engage with the young person, her family and further education partners to meet her needs. We are looking at our practice in this area in order to ensure better understanding of the young person's aspirations and how this may impact on their future education

d) The specific importance of supporting young people transitioning at year 6 or year 11.

We need to and will, further develop the right structures to be in place to support the most vulnerable at transition, which can be a period of stress and anxiety particularly for young people with SEN.

We know we must improve our timeliness and clarity of information in supporting young people to transition post-16, and record that we have listened to their wishes and those of their families.

We need to do more to ensure that young people transitioning to adulthood have the right support to be ready for independent living.

4. Conclusions

This learning is being fed into our improvement plan and the recommendations will be embedded in how we translate learning into our own practice and the wider SEND transformation work. The issues raised have been taken seriously and they have already changed practice.

Ultimately, we are seeking to significantly change how we work with young people, families and partners. We have taken the principles of the learning and we will continue to apply them across the wider service.

Dawn Stabb

Deputy Chief Officer Children's Services - Head of Education and Learning