

<b>Classification:</b> Open	<b>Decision Type:</b> Non-Key
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<b>Report to:</b>	Cabinet	<b>Date:</b> 14 February 2024
<b>Subject:</b>	Report by the Local Government and Social Care Ombudsman (21 011 785 / 23 005 479 / 22 011 825)	
<b>Report of</b>	Deputy Leader and Cabinet Member for Children and Young People	

## 1.0 Summary

1.11 This report sets out the findings by the Local Government & Social Care Ombudsman (LGO) made against the Council following the Council's failure to comply with agreed recommendations following two earlier investigations and the action now taken by the Council to demonstrate that it has complied with those recommendations.

1.1 An initial complaint was made to the LGO regarding the Council's failure to provide appropriate free transport. The Council agreed with the LGO findings and to meet the recommended within agreed timescales. However, the Council failed to do so and a further LGO investigation was opened, the Council agreed with the LGO's findings and agreed to meet the recommendations in agreed timescales. However, the Council failed to do so and a third investigation was opened.

1.12 A copy of the LGO report is contained at Appendix 1.

### Recommendation(s)

Cabinet is asked to note the recommendations made by the Local Government & Social Care Ombudsman, specifically the concerns expressed about the Council's failure to implement remedies within a reasonable timeframe.

### Reasons for recommendation(s)

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

### Alternative options considered and rejected

None

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## 1.0 Background

- 1.1 An initial complaint was made to the LGO in 2022 from the parent of a young person, in that the Council had failed to provide appropriate free transport to enable the young person to attend college named in his Education, Health & Care Plan.
- 1.2 The LGO findings following the initial investigation in May 2022 were that the Council:
  - 1.2.1 failed to consider the requirements of s508F of the Education Act, that Mr Y had an EHC Plan and was a relevant young adult.
  - 1.2.2 failed to decide whether it considered it was 'necessary' for Mr Y to receive travel support to facilitate his attendance at college;
  - 1.2.3 failed to show how the discretionary mileage allowance/personal travel budget it provided could be used to ensure Mr Y attended college;
  - 1.2.4 failed to discuss with Mrs X whether transport would be provided at the time it agreed to name the college in the EHC Plan. It did not give her sufficient information to make an informed decision about the choice of college;
  - 1.2.5 its policy failed to clearly set out its statutory duty to provide free transport if it was 'necessary' for relevant adult learners with an EHC Plan; and
  - 1.2.6 its adult social care team was aware the Council was not willing to provide Mr Y with transport to college. The Council should have considered its duties sooner under the Care Act.
- 1.3 The Council agreed with the findings of the LGO and to meet a number of the recommended actions by 30<sup>th</sup> June 2022, with the remaining action by 30<sup>th</sup> August 2022.
- 1.4 However, the Council failed to implement a number of the recommended actions within the agreed timescale:
  - 1.4.1 Apologise to the parent – this was completed;
  - 1.4.2 Make a payment to the young person – this was completed;
  - 1.4.3 Re-assess the young persons application for transport – this was completed, with an agreement to fund;
  - 1.4.4 To meet with the parent and young person to consider the impact the lack of transport had on the young persons ability to attend college and

complete his college course when deciding his future goals – this was not completed.

- 1.4.5 Review its post-16 transport policy to ensure it clearly sets out the difference in its duties between sixth form and adult learners, including the Council's responsibility to provide free of charge transport where it is considered necessary for relevant young adults with an EHC Plan – this was not completed.
- 1.5 In November 2022 the LGO opened a new investigation because of the Council's failure to implement the initial recommendations within the agreed timescale.
- 1.6 Following that investigation, the Council agreed with the findings of the LGO and committed to:
  - 1.6.1 Make a payment of £250 for additional frustration caused by the Council's failure to meet with the parents
  - 1.6.2 review its post-16 transport to education policy and confirm by 13<sup>th</sup> February 2023 when the revised policy would be finalised and approved by committee. The Council confirmed that it anticipated the revised policy to be in place for the 2023/24 academic year.
- 1.7 The Council has made the payment but failed to consult on and implement a revised post-16 transport to college policy within the agreed timescale.
- 1.8 In its final report the LGO found that the Council was at fault in not actioning the LGO recommendations within a reasonable timeframe, despite the Council having agreed to those timescales in both earlier investigations.
- 1.9 The recommendations set out in the final LGO report are that the Council should:
  - present a report to Cabinet on the new policy in December 2023
  - carry out full stakeholder consultation in Spring 2024
  - present a report to Cabinet in April 2024 for a decision regarding implementation
  - implement a revised post-16 transport policy by 31<sup>st</sup> May 2024

#### **1.10 The Council's actions to remedy and prevent re-occurrence**

- 1.11 At its meeting on the 13<sup>th</sup> December 2023 Cabinet received a report on proposals to consult on changes to the Council's home to school policy.
- 1.12 That report set out the need for the review of the current policy, including responding to the recommendations set out in the LGO report.
- 1.13 The report confirmed that a draft policy has been written that meets the Council's statutory obligations which was signed-off by the Education &

Skills leadership Team at its meeting on the 20<sup>th</sup> November 2023. But, given the Council's commitment to co-production, the Council would want to engage its parent carer forum in genuine co-production before producing a draft for wider consultation.

- 1.14 The report set out a proposal to work with Bury2gether, the parents forum, to co-produce a policy that is statutorily compliant; responds to the revised guidance issued by the Department for Education; and that continues to meet the needs of eligible children and young people within the available resources. This will be done in January 2024. The co-produced draft policy will then be subject to consultation with stakeholders during February, following which a further report setting out the outcomes of the consultation, and recommendations in respect of a new policy will be brought back to Cabinet in April 2024.
- 1.15 It is expected that the new policy will be implemented by the 31<sup>st</sup> May 2024.
- 1.16 In addition, and in response to recommendations contained in the second LGO report, the Council has:
  - 1.16.1 Reviewed its procedures for assessing travel assistance applications from adult learners.
  - 1.16.2 Ensured a revised checklist for transport staff is in place to support during the assessment of the application
  - 1.16.3 The transport team are actively signposting applicants and their families to Adult Services to consider whether support should be provided under the Council's Care Act duties. The Children's Services Assessment Team have committed to addressing transport/travel assistance at the start of the process and triggering the Care Act assessment at this stage.

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### **Links with the Corporate Priorities:**

The implementation of recommendations set out in the LGO report will support key ambitions of the Let's do it strategy:

- A better future for the children of the borough
- A better quality of life
- A chance to feel more part of the borough
- Building a fairer society that leaves no-one behind

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### **Equality Impact and Considerations:**

Equality impact assessment will be carried out on the revision of the council's home to school policy prior to consultation and recommendations to be put before cabinet.

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## Environmental Impact and Considerations:

N/A

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## Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation

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## Legal Implications:

The Council has a duty to prepare and publish an annual transport policy statement specifying the arrangements for the provision of post-16 transport.

In carrying out those duties, the council must have regard to the Statutory Guidance for Local Authorities Post 16 transport and travel support to education and training by the Department for Education.

The findings of the LGO are that the Council is at fault, identifying maladministration and injustice. As a result, under Section 31(2) of the 1974 Act, the Council must formally consider the LGO report. In addition, the Council is required to place two public notices in local newspapers and/or newspaper websites.

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## Financial Implications:

The costs will be funded through the post 16 transport budget.

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## Appendices:

Appendix 1 – [LGO Case 23005479 Final Report.pdf](#)

## Background papers:

*None*

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

Term	Meaning
LGO	Local Government and Social Care Ombudsman