

<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 (23 006 024)	
<b>Report of</b>	Deputy Leader and Cabinet Member for Children and Young People	

## 1.0 Summary

- 1.1 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 an earlier LGO investigation and the action now taken by the Council to demonstrate that it has complied with those recommendations.
- 1.2 An initial complaint was investigated by the LGO which found that the Council had failed to act properly when the child was out of education causing injustice. The Council agreed to remedy the complaint in the manner recommended by the LGO but failed to do so within the timescales required. However, the Council failed to meet the agreed recommendations. This was re-investigated by the LGO which found fault with the Council causing injustice and making further recommendations.
- 1.3 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)

A requirement stipulated by the Local Government and Social Care Ombudsman is that a copy of its report is considered by the Council at its full Council, Cabinet or other appropriately delegated committee of elected members in accordance with the Local Government Act 1974, section 31(2), as amended.

## Alternative options considered and rejected

None

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## Report Author and Contact Details:

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*Position: Strategic Lead (Education)*

*Department: Children's Services*

## 2.0 Background

2.1 An initial complaint was submitted to the LGO in June 2022 from a parent of a child alleging that the Council failed to act properly when the child was out of education, the LGO investigated and concluded that the Council was at fault, causing injustice.

2.2 The LGO findings were:

2.2.1 The Council failed to consider the child's case properly at the fair access protocol meeting or provide reasons why the child could not be admitted besides saying the school was over-subscribed.

2.2.2 That there was no contact from the school allocated by the Panel. That the Council knew but did not take prompt action.

2.2.3 There was little help from the home education team or follow up.

2.3 The Council agreed with the LGO findings and to take the following actions within one month of publication (March 2023) of the final statement:

- to apologise to the parent and make a symbolic payment of £350 for the avoidable distress and uncertainty that the outcome may have been different but for the faults;
- to pay £2,400 to the parent for the child's lost education (£600 for four school months) which should be used to help the child make up the lost education;
- the parent should discuss what might be appropriate with the child's current school;
- to remind the home education team that, where home schooling is considered unsatisfactory, it should consider whether enforcement action should be taken to ensure a pupil's school attendance, or consider whether its duty to provide alternative education is triggered; and
- the Council does not consider it is necessary to make notes of the fair access Panel meetings. However, its policy says that the protocol must be transparent and equitable. To achieve transparency, there should be a brief account of how the Panel weighed in the balance all the available information, and why it allocated a particular school.
- the Council's policy says there should be an assessment of a pupil's needs but this did not happen in this case. The Council should now

ensure that this aspect of its policy is adhered to by reminding relevant staff of this requirement

- 2.4 On 11 April 2023, the parent informed the LGO that they had not heard from the Council in respect of the agreed remedy.
- 2.5 The LGO raised this with the Council on 13<sup>th</sup> April and again on 3<sup>rd</sup> May.
- 2.6 On 14<sup>th</sup> July, the Council confirmed to the LGO that, in consultation with the parent, it had agreed to provide tutoring directly up to the sum of £2,400. However, the parent was of the view that she wanted this payment directly because she had already employed a tutor for the child. Further, the parent wanted to continue with this tutor as the child had a good relationship with the tutor and was beginning to show improvements in her schoolwork.
- 2.7 The Council also confirmed that it had written to apologise to the parent.
- 2.8 On 19 July, the LGO informed the Council that it had provided no evidence of compliance with the recommendations to improve the fair access Panel processes and, on that basis the LGO opened a new investigation.
- 2.9 On 25 July, the LGO wrote to the Council, explaining that the agreed payments should be made directly to the parent, that the apology letter had misspelt the parents' surname and had other grammatical errors, and that there was no evidence the Council had complied with the two recommendations to improve the Fair Access Panel.
- 2.10 The misspelling of the parents' name, grammatical errors and the delay in compliance with agreed recommendations compounded the parents' avoidable distress.
- 2.11 On 8 August, the Council confirmed that, due to procedural errors, it had not made the payment for the parents' avoidable distress, and apologised and said it would now do so. It also confirmed that it would pay the £2,400 directly to the parent, and that it would amend the apology letter. The Council also confirmed that the home education team would refer all pupils to the children missing from education team when it is determined that the home education is unsatisfactory at which point the Council would then decide either on enforcement action or whether it should provide alternative education. In addition, the Council also stated that minutes would be taken at its Fair Access Panels of the discussions held and of the rationale for decisions.
- 2.12 The LGO confirmed that, where it finds fault and make recommendations, it expects councils to carry them out within the agreed timescales.
- 2.13 The Council's delays in acting on agreed recommendations following the investigation could undermine public trust in the Council's ability to

operate a fair system of redress and causes further avoidable distress to the complainant.

- 2.14 The LGO also confirmed that, as there have been issues with compliance with remedies on another case (23 005 479) and, because of this, it has made recommendations to address the systemic problems in the Council in implementing the recommendations it agrees to.

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

- 2.16 From September 2023, the Council introduced a new Elective Home Education (EHE) Policy (appendix 2). The policy ensures processes to safeguard children and young people, working with a range of agencies, and with all new referrals being processed through our MASH (Multi agency Safeguarding Hub) which will advise on any safeguarding issues.

- 2.17 Where EHE has been deemed unsuitable, the EHE officer will advise the family that they should apply for a school place. If they decline this course of action, they will be advised that the matter will be referred to the CME (Children Missing Education) officer and a School Attendance Order (SAO) will be served. The School Attendance Order will name a school for the child to attend. Failing the compliance of the SAO, the legal team will take the matter to court for a decision from the Judge.

- 2.18 A dedicated Officer has been appointed within the school admissions team to support families who want to reintegrate their children back into education following EHE. The officer supports school admissions, CME and EHE. The officer also attends the IYFAP process and follows the child's journey to ensure that a school admission meeting is provided to avoid the child becoming CME. Records are updated on the minutes from IYFAP and shared at the next meeting, but also on our Early Help Module (EHM) records so that agencies can view the progress that is being made. The records for EHE and CME are also updated.

- 2.19 Under this new policy, since September 2023, the Council has issued nine School Attendance Orders (SAO) served for children who were not receiving suitable education and where parents have refused to engage with an in-year transfer. This process is being monitored by the School Attendance and Exclusions Manager.

- 2.20 In addition, a new in-year fair access policy (IYFAP) is in place for primary schools. The IYFAP panel meet on a monthly basis to ensure that vulnerable children are found a suitable school place as quickly as possible. The secondary IYFAP process is already well established and regular meetings taking place. Minutes are taken at each panel meeting. A copy of redacted minutes will be provided to the LGO as part of the Council's evidence of compliance.

- 2.21 All EHE/CME and IYFAP processes are reviewed via our vulnerable children's group which is a multi-agency panel that meets on a weekly basis. This ensures that where concerns are raised a multi-agency approach can be provided. A copy of the terms of reference are attached at appendix 3.
- 2.22 The Council is providing training to staff in relation to the new policies, and in respect to the wider issues raised by the LGO.
- 2.23 A re-structure of the Children's Services Department in summer 2023 has strengthened the arrangements for accountability in this area of the Department's work to ensure that all of the Council's statutory education functions are clearly aligned under the leadership of the Director of Education & Skills. Further, that re-structure ensured additional capacity was focused on activity related to vulnerable children, particularly in respect of children electively home educated, and children missing education.
- 2.24 Alongside this, the Department is strengthening arrangements for monitoring and responding to complaints, including those made to the LGO.

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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:**

The outcomes of the initial equality analysis are positive. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows: A public authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations and

demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

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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 should have a written policy statement on Elective Home Education.

In formulating such policy the council should refer to the departmental guidance from the Department for Education in relation to Elective Home 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 Children and Young People budget.

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**Appendices:**

Appendix 1 - Local Government Ombudsman – case reference number 23 006 024 Final report - [LGO Case 23006024 - Final Report.pdf](#)

Appendix 2 - Elective Home Education (EHE) Policy

Appendix 3 – Vulnerable Children’s Group terms of reference

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**Background papers:**

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

<b>Term</b>	<b>Meaning</b>
LGO	Local Government and Social Care Ombudsman
EHE	Elective Home Education
CME	Children Missing Education
IYFAP	In Year Fair Access Protocol