

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>CABINET</b>
<b>REPORT TITLE:</b>	<p><b>Local Government &amp; Social Care Ombudsman Decision Finding of Fault Causing Injustice and Action Plan to Prevent Reoccurrence</b></p> <p><b>Report by the Monitoring Officer under section 5A of the Local Government and Housing Act 1989</b></p>
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<p><b>Debbie Jones, Corporate Director Children, Young People &amp; Education</b></p> <p><b>Shelley Davies, Director of Education</b>  <b>Stephen Lawrence Orumwense, Director of Legal Services and Monitoring Officer</b></p>
<b>LEAD OFFICER:</b>	<p><b>Shelley Davies, Director of Education</b>  <b>Stephen Lawrence Orumwense, Director of Legal Services and Monitoring Officer</b></p>
<b>KEY DECISION?</b>	<b>No</b>
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>
<b>WARDS AFFECTED:</b>	<b>N/A</b>

## 1. SUMMARY OF REPORT

- 1.1 On 4<sup>th</sup> August 2023, the Local Government & Social Care Ombudsman (LGSCO) informed the Council of its decision in respect of Child B and his mother Ms M. The LGSCO found the Council to be at fault which caused injustice in that: *“The Council did not consider its duty under s19 of the Education Act 1996 to make alternative arrangements for B’s education when Ms M said he was too ill to attend school.”*
- 1.2 The purpose of this report is to advise Cabinet of the LGSCO findings and recommendations, and the actions taken to date to address the issues raised in the recommendations.

## **2. RECOMMENDATIONS**

For the reasons set out in this report and its appendices the Executive Mayor in Cabinet is asked to:

- 2.1 Note the LGSCO findings and recommendations in respect of Child B in Appendix 1.
- 2.2 Endorse the Action Plan in response to the recommendations including the measures already in place as set out in Appendix 2.
- 2.3 Adopt the report as the Executive's formal response as required by section 5A of the Local Government and Housing Act 1989 for distribution to all members and the Monitoring Officer.

## **3 REASONS FOR RECOMMENDATIONS**

- 3.1 Ms M complained that the Council's failure to act caused Child B injustice because it had failed to consider whether or not he was receiving a suitable education between September 2021 and September 2022.
- 3.2 The LGSCO concluded there had been fault on behalf of the Council that had caused Child B injustice. Further, the LGSCO stated that it had investigated a previous complaint made to the Council of a similar nature and despite being assured "lessons were learnt" it was not convinced that they had been.
- 3.3 On that basis the LGSCO has recommended that its decision of 4<sup>th</sup> August 2023 be put to the relevant scrutiny committee to ensure the Action Plan is "embedded" and that the scrutiny committee monitor the implementation of the action plan. The LGSCO findings and recommendations and action plan in response is being considered by Cabinet on route to the relevant scrutiny committee.

## **4 BACKGROUND AND DETAILS**

- 4.1 What follows is a brief chronology of what happened.
- 4.2 In September 2021 Child B transferred to his secondary school.
- 4.3 Between September 2021 and October 2021 Ms M states Child B's school attendance started to decline as he was struggling with the transition from primary to secondary school. Ms M telephoned the Council's Attendance Service in September 2021 and October 2021 to ask for help because B was refusing to go to school.
- 4.4 Child B is said not to have attended school after November 2021. Ms M produced a letter to the school from her GP and sent it to the school stating Child B could not

attend school. This was not accepted by the school and consequently Child B's absence was considered as unauthorised.

- 4.5 In November 2021, Ms M made an application to the Council for an Education, Health and Care (EHC) Needs Assessment for Child B. The Council declined the request for an EHC Needs Assessment and this was communicated to Ms M in December 2021.
- 4.6 A Team Around the Family (TAF) meeting took place in December 2021, which was also attended by Child B's GP. Ms M appealed the Council's decision to refuse an EHC Needs Assessment. The appeal was registered by the SEN Tribunal in February 2022.
- 4.7 In February 2022 the school contacted Child B's GP to suggest next steps for B to receive interim education.
- 4.8 A further TAF meeting took place in February 2022 which was attended by Ms M and the school. Ms M mentioned interim tuition and the school explained the information required for that to take place as discussed with Child B's GP.
- 4.9 In April 2022 the Council conceded the Tribunal appeal and agreed to undertake an EHC Needs Assessment for Child B.
- 4.10 The school then made a referral to an interim education provider which was accepted. Child B started attending Springboard (interim tuition service) in July 2022.
- 4.11 On 20<sup>th</sup> September 2022 Ms M made a Stage 1 complaint to the Council. In early November 2022 Child B started attending a new school placement. On 4<sup>th</sup> November 2022 the Council issued a response to the Stage 1 complaint. On 15<sup>th</sup> November 2022 Ms M escalated her complaint to a Stage 2 complaint. On 15<sup>th</sup> February 2023 the Council issued a response to the Stage 2 complaint. Unhappy with the response Ms M referred the matter to the LGSCO who has made a finding of failure.
- 4.12 The Ombudsman's findings found failings including:
  - a) That the Council does not appear to have considered its duty under s19 of the Education Act 1996 to make alternative arrangements for Child B's education. The Council should have assessed whether B was receiving suitable education when Ms M reported concerns in September 2021. The Council should have contacted Child B's school to find out what arrangements the school had made and decided whether or not they were suitable.
  - b) That Child B was clearly having a difficult time, and without the assessments the Council should have conducted at the time, it is difficult to say now whether he would have benefitted from alternative education provided by the Council. This uncertainty is a further injustice.

- c) That from September 2021, when Ms M first reported problems to the Council, until September 2022 when he transferred to an independent special school, the Council failed to consider whether Child B was receiving suitable education.

4.13 To remedy the injustice caused, the LGSCO has made the following recommendations:

- a) *“The Council apologises to Ms M and B for its failure to consider whether B was receiving suitable education between September 2021 and September 2022”.*
- b) *“Offers a symbolic payment of £5,000 to recognise the Council’s failure to ensure B received suitable education”.*
- c) *“Refers my decision to the relevant scrutiny committee and develops an action plan to ensure the lessons learned from this and the previous complaint are ‘embedded’. The scrutiny committee should monitor the implementation of the Council’s action plan.”*
- d) *“I recommended the Council makes the apology and payment within six weeks of my final decision. The Council should refer my final decision to the next meeting of the relevant scrutiny committee and provide evidence (such as the minutes of the meeting) showing the action the Council plans to take.”*

## **ACTIONS UNDERTAKEN AND NEXT STEPS**

4.14 Following receipt of the Ombudsman report the following actions have been taken in response to the recommendations:

- a) *The Council apologises to Ms M and B for its failure to consider whether B was receiving suitable education between September 2021 and September 2022”.*

The Council has undertaken this action.

- b) *Offers a symbolic payment of £5,000 to recognise the Council’s failure to ensure B received suitable education.*

The Council has undertaken this action.

- c) *Refers my decision to the relevant scrutiny committee and develops an action plan to ensure the lessons learned from this and the previous complaint are ‘embedded’. The scrutiny committee should monitor the implementation of the Council’s action plan.*

This action is in the process of being completed now with this report and referral. Please see attached Appendix 2 for actions that have also taken place since the LGSCO’s decision which are designed to embed lessons learnt.

In summary:

Upon receipt of the draft LGSCO findings the Council immediately uploaded its *children not being able to attend school due to medical needs or otherwise* policy to the Council's Local Offer. This is now on the Council's website available for the public to view.

The week after the draft LGSCO findings were received the above noted policy was sent to all staff within the Children, Young People and Education directorate to ensure they were all aware of it.

In September 2023 a member of the Access to Education service starts attending the Council's SEN Statutory Assessment Group's meetings to ensure the relevant service would be made aware as soon as the Council is of pupils who may not be in school due to medical reasons or otherwise. This is an ongoing practice.

4.15 An explanation as to why the fault reoccurred following the decision of 12<sup>th</sup> August 2021 is set out below.

4.16 In the previous complaint, of 12<sup>th</sup> August 2021, the Council was found to be at fault for not acting as it should have done to ensure the child in that case had an appropriate offer of education pursuant to its responsibilities under Section 19 of the Education Act 2019. In that instance, the child's parent had to fund online tuition for the child whilst the child could not attend an educational placement due to mental health difficulties. The LGSCO found that the Council, although aware the child was not attending a school, was unable to evidence that it had offered an appropriate education in that interim period and that if an offer was made that it was not kept under review by a named officer. The LGSCO recommended the Council put together an action plan to prevent this situation from reoccurring which was accepted and was completed. The actions following on from the previous decision were:

- Ensuring that an officer in the Access to Education team has key oversight of the *children not being able to attend school due to medical needs or otherwise* policy.
- Ensuring that all schools have the updated *children not being able to attend school due to medical needs or otherwise* policy.
- Ensuring that all key teams and officers where this may be relevant are aware of the *children not being able to attend school due to medical needs or otherwise* policy and practices and their steps. Ongoing comms and training cycle.
- Ensuring that the Springboard provision is accessible via referrals (form available centrally) and that all schools and internal officers know this process and the relevant statutory guidance.
- Ensure *children not being able to attend school due to medical needs or otherwise* is available on website as part of local offer.
- Re-establish two-way communication with Springboard so that we have registers of all new starters and are able to list at any time, young people who are known to the authority as being on school roll but are being educated otherwise than at school.
- Ensure that any parent/carer whose child is not attending school due to medical reasons or other otherwise knows the provision contact and has a named council contact to check in with monthly.

4.17 Despite the action plan in place following the decision of 12<sup>th</sup> August 2021, the fault reoccurred, however the reasons as to why it reoccurred were different. In the previous decision (12<sup>th</sup> August 2021), the relevant department, Access to Education, was aware

there was a child out of education but was unable to prove that it had made offers to provide interim tuition meaning the child's parent had to fund it. In the current decision (4<sup>th</sup> August 2023) the issue was that the same department *was not made aware* that a child was out of education. The fault in the latter instance occurred because the SEN department upon being notified that Child B was not in school, did not advise the Access to Education team of this which meant they were not able to take appropriate action.

## **5 CONTRIBUTION TO COUNCIL PRIORITIES**

Children and young people in Croydon have the chance to thrive, learn and fulfil their potential.

## **6 OPTIONS CONSIDERED**

Approach as prescribed in law, please see legal implications.

## **7 IMPLICATIONS**

### **7.1 FINANCIAL IMPLICATIONS**

The financial recommendations made by the LGSCO were a symbolic payment to the complainant of £5,000 to recognise the Council's failure to ensure B received suitable education.

*Approved by:* Ian Geary, Interim Head of Corporate Finance on behalf of the Director of Finance (15/3/2024)

### **7.2 LEGAL IMPLICATIONS**

**7.2.1** Under the Local Government Act 1974 (the Act), the LGSCO has the power to investigate the complaint and to issue a report under section 30(1) where there has been maladministration causing injustice; a failure in a service that it was the Council's function to provide; and a total failure to provide such service. If, after the investigation of a matter is completed, the LGSCO decides - (a) that he is satisfied with action which the authority concerned have taken or propose to take, and (b) that it is not appropriate to prepare and send a copy of a report under section 30(1), the LGSCO may instead prepare a statement of reasons for the decision and send a copy to each of the persons concerned.

**7.2.2** The LGSCO has the power to make recommendations to the Council on how to improve its services and to put things right for the complainant. These recommendations are not mandatory, and the Council does not have to accept or follow them. However, in this instance the Council has notified the Ombudsman that they accept and will action the recommendations and this is reflected in the Ombudsman statement of reasons for decision issued under section 30(1B) of the Act.

- 7.2.3** Where a finding of ‘maladministration’ is made the Council’s Monitoring Officer is obliged to prepare a report for the Executive following the LGSCO findings and to consult with the Head of Paid Service and Chief Finance Officer for this purpose. This report must also be sent to each member of the Council and the Executive must meet within 21 days thereafter (s.5A Local Government and Housing Act 1989). The Executive is required to consider this Monitoring Officer report on the findings of and response to the LGSCO’s decision.
- 7.2.4** Section 19 of the Education Act 1996 places a duty on as follows:
- 7.2.5** Each local authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.
- 7.2.6** Local authorities must arrange suitable full-time education (or as much education as the child’s health condition allows) for children of compulsory school age who, because of illness, would otherwise not receive suitable education.
- 7.2.7** Local authorities should: Provide such education as soon as it is clear that the child will be away from school for 15 days or more, whether consecutive or cumulative. They should liaise with appropriate medical professionals to ensure minimal delay in arranging appropriate provision for the child.
- 7.2.8** Ensure that the education children receive is of good quality, as defined in the statutory guidance.
- 7.2.9** Schools must provide support for their pupils with medical needs under their statutory duties as set out in ‘Supporting pupils with medical conditions at school’ (Department for Education, 2015). In failing to make arrangements for the provision of suitable education for B as set out in the report, it would appear the Local Authority are in breach of its duty under s.19 Education Act 1996. In addition, section 19 of the Children and Families Act (CFA) 2014 sets out the principles underpinning the legislation and the guidance in the SEND Code of Practice in particular paragraph 10.39 which states that 'Local authorities must make arrangements where, for any reason, a child of compulsory school age would not otherwise receive suitable education. Section 19 CFA makes clear that local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with special educational needs (SEN), must also have regard to:
- The views, wishes and feelings of the child or young person, and the child’s parents.
  - The importance of the child or young person, and the child’s parents, participating as fully as possible in decisions, and being provided with the information and support necessary to enable participation in those decisions.
  - The need to support the child or young person, and the child’s parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.

*Approved by:* Doutimi Aseh, Head of Social Care & Education Law and Sandra Herbert, Head of Litigation & Corporate Law, on behalf of the Director of Legal Services and Monitoring Officer (21/02/2024).

### **7.3 EQUALITIES IMPLICATIONS**

7.3.1 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in Section 149 of the Equality Act 2010. The Council must, in the performance of its functions, have due regard to its duty to:

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

7.3.2 Access to education has a great bearing on life outcomes for young people. There are clearly equalities implications for this case, which will be nuanced and require some thought as the Council undertakes scrutiny of its own actions and works to develop its action plan in response.

7.3.3 This may include but not be limited to consideration of relevant protected characteristics as they pertain to the individuals involved, as well as consideration how the Council exercises its duty to advance equality of opportunity, particularly in terms of access to services.

7.3.4 Equalities considerations will need to underpin any recommendations or actions arising from Scrutiny and be kept under review as the Council learns from this judgement and improves its approach and/or services.

*Approved by:* Helen Reeves, Head of Strategy & Policy (20/02/2024)

### **8 APPENDICES**

1. LGSCO's Decision of 4<sup>th</sup> August 2023
2. Council's Action Plan
3. LGSCO's previous Decision of 12<sup>th</sup> August 2021

### **9 BACKGROUND DOCUMENTS**

N/A

### **10 URGENCY**

N/A