

From: Peter Oakford, Cabinet Member for Specialist Children's Services.
Andrew Ireland, Corporate Director Social Care Health and Wellbeing.

To: Children's Social Care & Health Cabinet Committee - 5 July 2016

Subject: **Local Government Ombudsman Finding of Maladministration**

Classification: Unrestricted

Past Pathway of Paper: None

Future Pathway of Paper: None

Electoral Division: All

Summary: The Local Government Ombudsman has investigated a complaint against Kent County Council and concluded that there was fault by the Council which caused injustice to the complainant. The Ombudsman has issued a public report regarding the complaint.

Recommendation(s):

The Cabinet Committee is asked to note the contents of this report

1. Introduction

- 1.1 The Local Government Ombudsman has issued a public interest report following a complaint about the Council. The final report does not reveal the identities of the people involved but names Kent County Council as the organisation the complaint is about. A copy of the report is attached.
- 1.2 Mrs B complained that the Council refused to consider her need to work when assessing her son's care needs. In particular, Mrs B complained that the Council failed to consider awarding direct payments to provide care for her son while she is at work. Mrs B also complained that the Council delayed responding to the complaint.

2 Background to the Complaint

- 2.1 Mrs B is a single parent of two children. She works full time and is out of the house for about 11 to 12 hours per day. Her older son (child C), who is the subject of the complaint has disabilities and requires supervision. Child C is now an adult but at the time of the complaints he was age 16/17.

- 2.2 C has a diagnosis of Autistic Spectrum Disorder with associated social, behavioural and communication difficulties. He has mild cerebral palsy and has a Learning Disability.
- 2.3 C is currently a boarder at school returning home at school holidays and on some weekends. Assessments and carer assessments were completed by children's services. The family were provided with direct payments for support on weekends and some support during the school holidays. Mrs B, however, expressed concern that she did not have enough support in the school holidays to enable her to attend full time work.
- 2.4 Mrs B made a complaint to the Council. In its response, the Council said it could not award direct payments to fund the child care of a young person to allow a parent or carer to work. Mrs B contacted the Council again to say she remained dissatisfied and the complaint was logged at Stage 2 of the Children Act Complaints Procedure. An Investigating Officer and an Independent Person were appointed and met with Mrs B to confirm the complaints and complete the complaint investigation. The response to Mrs B confirmed the view that whilst the Council recognised Mrs B's right to work, and that child C has more care needs than other young people of his age, direct payments should not be used specifically to enable parents to work.
- 2.5 The complaint progressed to Stage 3 of the Complaints Procedure. The Stage 3 Panel decided that the Council had adhered to its Direct Payment Policy and therefore did not uphold the complaint. However, the panel considered the policy should be reviewed and agreed that £750 would be deducted from a previous overpayment of direct payments to Mrs B.
- 2.6 Mrs B then complained to the Local Government Ombudsman.

3. The Ombudsman's Findings

- 3.1 The Ombudsman was critical of the way the Council applied its policy on direct payments. She considered that the Council "fettered its discretion" and that "the wording of the Council's policy and the way in which it is applied suggests the Council operates a blanket policy of refusing to consider support to carers who work and that there is no evidence the Council considered Mrs B's circumstances before declining her request for extra support for Child C during school holidays".
- 3.2 The Ombudsman was also critical that there were delays in dealing with Mrs B's complaints.

4. The Ombudsman's Recommendations

- 4.1 To remedy the complaint the Ombudsman recommended that the Council should:
- Pay Mrs B £500 to reflect the time and trouble she had to go to in pursuing her complaint.

- Pay Mrs B an extra £500. This is to reflect the added stress she was under during the period and the uncertainty about whether the Council would have provided additional support if it had considered her case properly.
- Revise its Direct Payments Policy to reword the section referring to direct payments needed to support a child when a parent is working. That is because the wording of the current policy is likely to be interpreted by service users and Council officers as providing an absolute bar.
- When carrying out a review of its short breaks statement the Council should review the sufficiency of child care and the range of short breaks available during holidays for older disabled children.
- The Council should provide training for officers and managers carrying out social care assessments and dealing with direct payments. This is to ensure they are aware of Government guidance and legislation about carers who work or wish to return to work and ensure assessments properly consider that.

5 KCC Response to the Ombudsman's Report

- 5.1 In responding to the Ombudsman's provisional report, the Council explained that the Local Authority has to balance its use of resources but that the focus of social care services has to be on meeting the assessed needs of the service users rather than to provide child care to enable parents to go to work. It also explained that where parents are earning a salary they would be expected to fund some of the child care arrangements for their children. There was a concern that for the Council to pay for child care arrangements in these circumstances could be a precedent for others families to also seek direct payments for general child care.
- 5.2 Nevertheless, it is accepted that the following statement in the Direct Payments Policy (*It is important to note that the Direct Payment relates to the child's needs and cannot, therefore be used to fund a parent who wishes to go out to work*) does "fetter the discretion" of the Local Authority to make payments in exceptional circumstances and in practice there are occasions when direct payments are used for this purpose.
- 5.3 On receiving the Ombudsman's provisional findings, it was decided to seek a view from KCC Legal Services. The legal advice questioned whether the KCC policy was consistent with the relevant legislation and statutory guidance in force, including the Carers (Equal Opportunities) Act 2004, and the Carers and Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2014 Combined Policy Guidance. The legislation places a duty on local authorities, when assessing carers, to consider whether they work or wish to work, and to take this into account when deciding whether the needs of the disabled child may call for the local authority to provide services.
- 5.4 Taking these factors into account and having considered the case in some detail, it was decided to accept the Ombudsman's recommendations.

6 Further Actions

- 6.1 The Direct Payments Policy will be revised to reflect that in exceptional circumstances and where authorisation is provided by an Assistant Director, consideration will be given to providing direct payments to care for a disabled child to enable a parent to work.
- 6.2 The Council will pay Mrs B £500 to reflect the time and trouble she had to go to in pursuing her complaint and an extra £500 to reflect the added stress.
- 6.3 Two officers of the Council are meeting with the staff in the Disabled Children's Team and the Team Managers and Area Managers to provide an update on the use of Direct Payments. They will ensure staff are aware of the Government Guidance and the legislation about carers who work or wish to work and to ensure assessments give this proper consideration.
- 6.4 The Strategic Commissioning Service is working with the market to develop a wider range of holiday activities which are suitable for disabled young people in the 16+ age range who are not able to access mainstream activities because of their age and disability.
- 6.5 The Local Authority has three months from the date of the report (7 June 2016) to consider formally the report and the recommendations and then send a formal response to the Ombudsman.

Recommendation: The Children's Social Care and Health Cabinet Committee is asked to note this report and the Report from the Local Government Ombudsman.

7. Background Documents

None

8. Appendices

Appendix A – Report by the Local Government Ombudsman

9. Contact details

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