

From: Rory Love, Cabinet Member for Education and Skills
Sarah Hammond, Corporate Director of Children, Young People and Education

To: Children's, Young People and Education Cabinet Committee - 21 November 2023

Subject: Local Government and Social Care Ombudsman (LGSCO) Public Report Actions

Classification: Unrestricted

Summary:

This report outlines the actions the Council has taken and proposes to take in response to the report from the Local Government and Social Care Ombudsman (LGSCO) Investigation into a complaint about Kent County Council (reference number: **22 013 579**) which was decided on 17th August 2023.

Recommendation(s):

The committee is asked to note the contents of the report and the actions the Council intends to take as a result.

1. Introduction

- 1.1 The Local Government and Social Care Ombudsman (LGSCO) considered case 22 013 579 and reached a formal decision on 17 August 2023. Due to details within the case that the LGSCO believed could allow the complainant to be identified, their final decision has not been published on their website. As such it is not possible to include the full report as an appendix within this paper.
- 1.2 Within the report there were a series of recommendations, which included the following which has prompted the need for this paper:
- It is noted that as a result of previous investigations by the Ombudsman, the Council has agreed to a series of procedural improvements in delivery of services to children with special educational needs over the past 12 months. This has included:
 - reminding staff of the need to ensure the Council provides any education provision detailed within an EHC plan;
 - undertaking a detailed review of its policy and procedure for responding to situations where a child is out of school and not receiving education; and review at a senior level why a child was not provided with suitable alternative education when it became clear a school place could not easily be found, and why any potential barriers to doing so were not addressed at an early stage.

- Given that this investigation identified fault in these areas again after the Council said it had already carried out service improvements, the Council will consider this case at its next Children's, Young People and Education Cabinet Committee meeting in November 2023, along with any other relevant Ombudsman decisions made in the last 12 months. It will consider if there are any further actions the Council now needs to take. The Council will provide us with the minutes of that meeting.

1.3 It should be noted that the majority of SEN decisions and actions relating to this case occurred before KCC received the written statement of action and developed the Accelerate Progress Plan (APP) in response. While this in no way minimises the experiences of the family involved, it does provide useful context as to why previous assurances to the LGSCO did not result in the promised changes. The APP (Web link available at the end of the report under the background documents heading) provides a detailed action plan which will ensure that similar experiences are not felt by SEN families in the future.

Actions on the recommendations

2. Reminding staff of the need to ensure the Council provides any education provision detailed within an EHC plan.

2.1 SEND has undertaken a full review of staff training in an effort to ensure there is a clear understanding of the Council's statutory duties across the entire service. As a result, the SEND Performance and Practice Framework for Professional Development has been developed.

2.2 This framework is a summary of the support which is in place or under development to enable staff to do their jobs effectively by ensuring they are:

- Trained and competent
- Consistent in delivery and
- Communicating effectively, particularly with parents and carers, but also other key stakeholders such as educational settings.

2.3 This supports the Council's SEND Strategy which embraces this vision of improving the educational, health and emotional wellbeing outcomes for all of Kent's children and young people with special educational needs and those who are disabled through five priorities.

- Priority One: Improve the way we work with children and young people, parents and carers.
- Priority Two: Ensure children, young people and their families have positive experiences at each stage of their journey including a well-planned and smooth transition to adulthood.
- Priority Three: Identify and assess the needs of children and young people earlier and more effectively.
- **Priority Four: Improve education, care and health outcomes for children and young people with SEND.**
- Priority Five: Ensure children and young people with SEND are included in their local community.

2.4 A dedicated, mandatory staff training resource has been developed which includes key modules on appropriate placement decisions and timescales, support and challenge to named schools, annual review responsibilities and alternative provision where placement breaks down.

2.5 This combined vision and training will ensure that there is no further ambiguity in staff understanding their roles and responsibilities in cases where children are not accessing the resources available within their EHCP.

3. Undertaking a detailed review of its policy and procedure for responding to situations where a child is out of school and not receiving education.

3.1 Alongside the work outlined above, SEN worked in conjunction with the PRU, Inclusion & Attendance Service (PIAS) to undertake a review of the policies and procedures that are in place for the various scenarios where a child is out of school and not receiving an education.

3.2 The findings of this review can be found in Appendix A.

3.3 In addition, safeguarding review of children with the category of no placement, or provision unknown was undertaken on the reporting period June 2023 (Appendix B). The report explored the children's information considering any trends related to age, gender, school year, primary educational needs, along with the geographical area the child lives, in the context of safeguarding concerns, related to children not being in school being out of sight. The report considered children who were subject to Child in Need (CIN), Child Protection (CP) and Children in care (CLA) and children transferred in from other Local Authorities (classified as imports).

3.4 In terms of transitioning children back into school, children recently out of school and younger children are being considered a priority, along with children in care and those with previous care episodes, the rational being, the longer the child experiences a school absence the harder it will be for children to reintegrate back into education. The report includes an action plan which details how this area will be resolved.

4. Review at a senior level why a child was not provided with suitable alternative education when it became clear a school place could not easily be found, and why any potential barriers to doing so were not addressed at an early stage.

4.1 The following simplified chronology outlines the main points of the case. Details have been kept to a minimum in line with the LGSCO's decision not to publish the case.

- SEN was aware that Y was not attending school A in May 2021 and school A could not meet needs. The Council completed an annual review and decided to re-assess Y's SEN to better understand their needs.
- SEN did not take any action to ensure the provision was secured for Y until July 2021 when it tried to arrange tutoring services. Y's parent raised safeguarding concerns with the tutoring services that were detailed in Y's

EHC plan and school risk assessment. Both services withdrew their offers, therefore they were not available to Y.

- SEN said it had no further options for providing education. It later accepted the tutoring was not suitable as the services could not safeguard Y. SEN did not explore any alternative options at this point. Y missed a term of specialist provision between May and November 2021.
- SEN issued an amended EHC plan for Y in November 2021 specifying they needed a special school. SEN consulted with 23 schools and providers between November 2021 and June 2022 but could not identify a placement for Y.
- SEN referred to a tuition service that it already considered in June 2022 and it offered the same package it had withdrawn in October 2021, which was declined by Y's parent. SEN also offered tutoring from the other declined tuition provider again in October 2022. Y therefore remained without the specialist provision for three further terms between November 2021 and October 2022.
- In October 2022 the Council issued another amended EHC plan for Y.
- In January 2023 SEN offered Y two hours a week alternative provision. SEN then offered tutoring with another service in mid-February and eight hours a week with the alternative provider in March 2023. Tuition was declined by Y's parent.
- Following a Tribunal, Y's EHCP has been amended to "Educated Other Than At School" and alternative arrangements have been made for their education.

4.2 While significant effort was undertaken by officers, a review of this case has highlighted that this effort was not applied in a strategic or systematic fashion, leading to extended unreasonable delays and repetition of actions that did not meaningfully help address the presented barriers.

4.3 The actions outlined in section 2 and 3 of this report highlight how these issues are currently being addressed across the SEN Service, to ensure that similar cases do not occur in the future.

5 Financial Implications

5.1 The LGSCO decision also required KCC to pay the complainant a total of £12,200 to recognise the education and specialist provision Y did not receive over four and a half terms between May 2021 and March 2023, alongside a symbolic payment to recognise the distress and frustration caused by the Council's faults.

6 Legal implications

6.1 The Council as far as it can so far, have fulfilled the obligations to the Ombudsman's public report. However, there may be other public reports the Ombudsman may wish to issue, should it find further evidence of systemic issues in the course of their investigations that is not covered by this report or where they feel we have not made sufficient progress in rectifying the issues raised in this public report.

7 Governance

Following the committee's discussion, we will be supplying the link to the webcast and the remaining evidence asked for by the Ombudsman.

8 Recommendation(s)

Recommendation(s):

The committee is asked to note the contents of the report.

9 Background Documents

Accelerated Progress Plan – Website Link: [Kent improvement plan for special educational needs and disabilities \(SEND\) - Kent County Council](#)

Appendix A – Review of procedures where a child is out of school and not receiving an education.

Appendix B - Quality Assurance Safeguarding Report Review of children with no placement unknown provision and Imports June 2023.

10. Contact details

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