

Report to: **Lead Member for Education and Inclusion, Special Educational Needs and Disability**

Date: **30 April 2020**

By: **Assistant Chief Executive and Director of Children's Services**

Title of report: **Local Government Ombudsman's report**

Purpose of report: **To consider the Local Government Ombudsman's report of maladministration**

RECOMMENDATION:

The Lead Member is recommended to:

Consider the contents of the Local Government and Social Care Ombudsman's report in respect of complaint reference 18 012 500 and agree the recommendations set out in section 3 of this report

1. Background

1.1 The Local Government and Social Care Ombudsman (LGO) has power under the Local Government Act 1974 to investigate and issue Reports concerning allegations of maladministration or service failure. Details of complaints made to the LGO are reported to members at Cabinet and Council through the Council quarterly monitoring report. The Governance Committee also receives an annual complaints report which sets out the annual report received from the LGO.

1.2 The LGO has issued the report attached at Appendix 1 following an allegation of maladministration by the Council in the exercise of its functions. The LGO has concluded that there was maladministration on the part of the Council and that this caused injustice to the complainant. The LGO has issued a public report which includes recommendations. The report is issued under s31 of the 1974 Act. The report must be reported to Council (or an appropriate Committee) who must consider the report and confirm within three months the action it has taken or proposes to take. The Governance Committee considered a report on this matter on 21 April 2020. The Committee accepted the findings of the LGO and agreed to the action recommended by the LGO, and in so far as those actions relate to executive functions, also agreed to recommend that the Lead Member agrees to them.

1.3 The full report is attached at Appendix 1. By way of summary, Mr X complained about the Council's decision around the provision of home to college transport for his adult learner son, Mr A, (aged 19). Mr A attends college five days a week and his college is named on his Education, Health and Care (EHC) plan. During the 2017-18 academic year the Council provided Mr A with home to college transport 4 days a week and his parents provided transport for the 5th day. In June 2018, his parents applied for home to college transport for 5 days a week as their work commitments had changed which in their view meant they could not take him anymore. The matter was considered by officers and the Appeal Panel. The Appeal Panel felt it wasn't necessary to provide transport as it noted that both parents had flexible working arrangements which meant they could arrange their son's transport for one day a week. The Panel said this was a reasonable expectation of the parents.

1.4 Although the LGO acknowledges that the Council applied the correct statutory test, that of "necessity", in determining whether transport should be provided, the LGO found that the Council's policy was at fault as it referred to transport being provided only in "exceptional" circumstances, and as such the decision of the Panel was flawed.

1.5 The LGO's finding in relation to the policy is surprising as the LGO had previously considered the policy in an earlier decision and a few weeks before this case was determined by the Appeal Panel found that the policy was in line with the law and the Council was entitled to apply it, which the Panel then did. When this was raised with the LGO they said that they had changed their view and were not bound by the previous decision. Clearly if the LGO had made this decision in the previous case, this case would have been decided under a revised policy. In this regard the LGO's inconsistency is unsatisfactory. Councils and the public should be entitled to rely on previous decisions of the LGO. The Governance Committee therefore agreed at its meeting on 21 April to request that the Chief Executive write to the LGO to express concern at their change of view in relation to the policy.

2 Actions recommended by the LGO

2.1 The LGO has determined that the fault in the policy, and subsequently the decision caused an injustice to Mr X. The family have already been offered 5 days transport for attendance at the College for the start of the Sept 2019 academic year. To remedy the injustice, the LGO has recommended the following action:

- a) Apologise to Mr and Mrs X for the fault identified.
- b) Pay Mr and Mrs X £300 in recognition of the uncertainty caused by the fault identified.
- c) Review the cases of young adults (19-25) who have an EHC plan naming an educational setting and who were refused transport at appeal in 2018 and 2019. The review will consider if others have been similarly affected by the fault identified in this report.

- d) Write to the young adults identified in its review (those affected by the fault identified in this report) and invite them to reapply for travel assistance (if still relevant) under its revised policy. There were 5 appeals for the academic year 2019/2019 and 7 appeals for the academic year 2019/20.
- e) Review its policy on post-16 (to 25) SEND travel (2019) and revise it to properly reflect the test set out in law. The policy should be clear that the Council has a statutory duty to provide transport to post-19 learners if it is considered 'necessary', not exceptional.
- f) Properly reflect in its revised policy the difference between the approaches the Council should be taking for young people aged 16-18 and those over 19.
- g) Make the finalised policy available on its website.

2.2 Revised Policy

Attached at Appendix 2 is the revised policy. This policy reflects the findings of the Ombudsman in that:

- (i) The policy now refers to the wording of the Education Act 1996 in that a Council must make such arrangements for the provision of transport as they consider necessary to facilitate the attendance of specified groups of pupils receiving education or training. The previous policy referred in parts to the word exceptional, which has now been replaced throughout by the word "necessary", so there can be no room for doubt as to the criteria applied.
- (ii) The provisions relating to travel arrangements for 16-19 year olds are contained in a different section of the Education Act 1996 to those relating to post 19 adult learners. The drafting of two separate policies reflects the considerations relevant to each age group that the Council must make when determining what transport arrangements are necessary. This provides clarity and no room for doubt as to which section of the Education Act has been engaged.
- (iii) The Council has taken the opportunity to review the lay out and wording throughout to achieve maximum clarity and ease for those applying for transport assistance.

2.4 The current policy is available at:

<https://www.eastsussex.gov.uk/educationandlearning/schools/transport/strategy/download/>

3. Recommendations

3.1 The Lead Member is recommended to accept the findings of the LGO and agree to recommendations (c), (d), (e), (f), (g) set out in paragraph 2.1 above. Recommendations (a) and (b) having already been agreed by the Governance Committee.

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BACKGROUND DOCUMENTS

None

APPENDICES

Appendix 1 – Report by the Local Government and Social Care Ombudsman, Investigation into East Sussex County Council (reference number 18 012 500).

Appendix 2 - Revised ESCC 16-19 SEND Travel Assistance Policy and Revised ESC Post-19 SEND Travel Assistance Policy