

**REPORT OF THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN (LGSCO)
– EHC PLANS (Reference 17 009 505 – Mrs B)**

Key Decision No.N/A

CABINET MEETING DATE (2018/19) 15 July 2019	CLASSIFICATION: Open If exempt, the reason will be listed in the main body of this report.
WARD(S) AFFECTED All Wards	
CABINET MEMBER Cllr Kennedy Families, Early Years & Play	
KEY DECISION No REASON Click Here to Select	
GROUP DIRECTOR Anne Canning Group Director Children, Adults & Community Health	

1. CABINET MEMBER'S INTRODUCTION

- 1.1. The Local Government & Social Care Ombudsman (LGSCO) has issued a report (Appendix 1) following an investigation of a complaint against the Council. The complaint related to the initiation & completion of an Education, Health & Care (EHC) needs assessment for a child with special educational needs, as well as the provision of support prior to completion of this assessment. Further details of the complaint are set out in this report.
- 1.2. The Ombudsman found that there had been fault on the part of the Council, and that this had, in their view caused injustice to the complainant. We have apologised for the faults identified and have complied with all recommendations set out in the LGSCO's report.
- 1.3. The LGSCO report raises important issues which impact on the way Local Authorities undertake and complete EHC needs assessments which we will be raising with the Department for Education.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. The LGSCO investigation relates to the process undertaken to initiate and complete an Education, Health & Care (EHC) needs assessment for a 2 year old boy (child C) with Down Syndrome who moved into the area in September 2015.
- 2.2. In summary, the LGSCO's report identifies issues with regard to provision of support for a child who has special educational needs (prior to an EHC needs assessment), these are:
 - a) Delay in considering an EHC needs assessment,
 - b) Child C's EHC Plan not being issued within statutory 20 weeks, and
 - c) Social care advice not being provided as part of the EHC needs assessment.
- 2.3. The case has been complex, taking 18 months for the LGSCO to investigate and produce the final report. During this time, the Council has provided significant supporting information & legal comment to the LGSCO.
- 2.4. The LGSCO's investigation raised issues with regard to the legal interpretation of the provision of support for a child who has or may have SEND. In this case, the Council felt that provision and reasonable adjustments were put in place with Child C's nursery to include him and support his attendance within the setting. We do, however, acknowledge that there may have been a lack of clarity with regard to the Council's processes to consider EHC needs assessment at the time Child C came to the Council's attention. The Council's understanding of the legal provisions governing when an assessment should be undertaken by a local authority meant that an assessment was not undertaken at that time. This led to a delay in an EHC needs assessment being initiated.
- 2.5. Since the mother of Child C, Mrs B, first lodged her complaint with the Council, a number of reviews and audits regarding the EHC planning

process have been undertaken. This is part of ongoing service review and improvement. These include:

- A review, finalised in July 2017, of processes to initiate and complete assessments within 20 weeks, with a follow up review in September 2018; and
- An internal audit, finalised in October 2017, with follow up audit review in June 2019.

- 2.6. Notwithstanding this, the Council will revisit its processes in light of the LGSCO report to ensure these remain robust and that information for parents is clear and accessible.
- 2.7. The LGSCO's report also queries the nature and the use of the Supported Childcare Fund, discretionary funding available at the time to support settings meet the needs of a small number of children with emerging or undiagnosed needs. This funding was replaced by the Early Years Inclusion Fund in 2017 following implementation of the new national Early Years Funding Formula. Whilst the processes for allocating this funding were reviewed and strengthened at this point, we have agreed to review the processes again in light of the report. Given the unique and complex nature of this case, we do not think that, as suggested in the LGSCO's recommendation, other families who could not access the discretionary Supported Childcare Fund at that time have suffered an injustice. We have, however, agreed to write to a family who was not able to receive this funding to invite them to make a case showing that injustice was caused.
- 2.8. With respect to 2.2 a) above and the delay linked to consideration of the initial request to undertake an EHC needs assessment (and co-production of the ultimate plan), the Council believes that statutory guidance set out in the SEND Code of Practice was followed. However, the Code of Practice requirements are not in line with the statutory requirements identified by the LGSCO (set out in the Children & Families Act). This issue has more wide ranging implications than this complaint because many of the practices scrutinised by the LGSCO report are no different to those of most other local authorities. As such, some of the conclusions in the report have raised significant issues for all local authorities. The Department for Education has noted this and has been in touch to explore the issues further.
- 2.9. In respect of 2.2 b) above, the report identifies a 48 week delay in issuing Child C's EHC Plan. The Council acknowledged a number of avoidable delays in the EHC needs assessment process and apologised for these at the resolution and review stages of the Council's complaints process. The Council also acknowledges that once the assessment had commenced, the dialogue with the parent at the co-production stage of the EHC needs assessment took significantly longer than the 20 week period set out in the SEND Code of Practice's statutory timescales. Whilst we believe that this dialogue with the parent contributed to the quality of the plan, we acknowledge that this resulted in delays in the statutory 20 week assessment process.
- 2.10. This report sets out the LGSCO's recommendations in more detail and how the Council has already responded, or intends to respond, to them. It also

sets out the Council's case management approach in terms of this specific case.

3. RECOMMENDATION(S)

3.1. The Cabinet is asked:

To note the contents of the LGSCO report (appendix 1) and the Council's response as set out in this report (paragraphs 6 and 7).

4. REASONS FOR DECISION

4.1. This report forms part of the Council's obligations under the Local Government Act 1974 to publicise receipt of an LGSCO report.

4.2. The LGSCO has concluded that there was fault by the Council which caused injustice to Mrs B and to Child C and that the Council should take the action identified in the report to remedy that injustice.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5.1. There is no right of appeal against an LGSCO decision. A complainant, Council or authority can, however, apply to the courts for a judicial review of a decision. We do not propose to take this course of action.

5.2. Exceptionally, the LGSCO has an internal review system in place where a request can be made for a decision to be reviewed in very limited circumstances – where a decision was made based on important evidence that contained facts that were not accurate or if new and relevant information (that was not previously available) is provided which affects the decision made. In either circumstance, a request to review must be made within 1 month of the decision.

5.3. Whilst the Council provided robust information to explain its actions and, where appropriate, apologised at an early point in the complaint process for recognised delays, it was not felt appropriate at this stage to submit further challenge to the LGSCO decision. Furthermore, given the low threshold for requests to initiate EHC needs assessments and the statutory timeframe to complete assessments within 20 weeks, it was felt that there were insufficient grounds to apply for a judicial review.

6. BACKGROUND

6.1. EHC legislation and Investigation & findings of the LGSCO

6.1.1. In September 2014, SEND legislation was significantly reformed. Part 3 of the Children & Families Act 2014 and the SEND Regulations 2014 set out new requirements for local authorities in relation to the identification & assessment of children with SEND. Alongside this legislation, the SEND Code of Practice 2014 was published providing statutory guidance on duties, policies and procedures relating to the new SEND legislation and regulations.

- 6.1.2. This new legislation placed a requirement on local authorities to identify & assess children & young people who may have special educational needs within a 20 week timeframe. The SEND Code of Practice breaks down the 20 week timeframe into constituent aspects of the assessment process (see [appendix 2](#)). Furthermore, where it is agreed that an EHC plan is required to meet a child or young person's SEND, local authorities must co-produce the plan with the families and/or young person.
- 6.1.3. The Council's [Local Offer](#) provides advice & guidance for parents & carers in relation to the EHC needs assessment process and how to request an assessment. This website is subject to ongoing review and update to reflect customer feedback and current practice at the time.
- 6.1.4. Whilst the Council takes every step to meet the statutory 20 week deadline, the assessment and co-production process can be complex and delays do occur. Nationally, local authorities are struggling to issue EHC plans following assessment within the 20 week timeframes. In the 2018 calendar year, Hackney issued 42.4% EHC plans within 20 weeks; this compares to, nationally, 58% of plans being issued in 20 weeks and 53.4% of plans in inner London authorities being issued within 20 weeks¹.
- 6.1.5. In this case, the LGSCO has considered whether the Council assessed & identified Child C's needs in line with statutory legislation and due process. As a result, they have made a series of recommendations to remedy the injustice caused to Mrs B and to Child C.
- i. Apologise in writing to Mrs B;
 - ii. Pay Mrs B £4,150 (£3,000 in recognition of the delay in receiving the provision Child C was entitled to, £1,000 to acknowledge distress caused to the family and £150 in recognition of the time and trouble caused to Mrs B in pursuing her complaint).
 - iii. Review procedures to ensure that when notification is received under Section 24 of the Act that a child in its area may have special educational needs, the Council consults parents and other professionals so as to reach a decision about assessment within 6 weeks;
 - iv. Review and streamline processes to meet the 20-week timescale required to finalise EHC plans;
 - v. Review the arrangements for the new early years inclusion fund to ensure it will not allow for the faults identified by this investigation to be replicated;
 - vi. Write to the parents of all children who were placed on the waiting list for (supported childcare) funding to explain the faults identified by this investigation and provide a remedy for those families on the same basis as that provided in this case.
 - vii. Be willing to consider complaints raised by other parents in the light of the findings of this case with regard to delays in the process
- 6.2. **Notification that Child C may have SEND to EHC needs assessment initiation**

¹ Department for Education, "Statements of SEN & EHC Plans: England 2019"

- 6.2.1. When Mrs B moved into the area in September 2015, Child C's case was considered by the Multi Agency Referral Service meeting to determine local support & interventions to support his Down Syndrome. The meeting allocated a key worker to support the family and Mrs B and Child C subsequently attended Portage drop in sessions.
- 6.2.2. Once Child C started attending nursery in November 2015, one of the Council's Area SEN Co-ordinators (SENCo) started to work with the nursery, family and other professionals (e.g. speech & language therapist) to provide advice, guidance & training to support Child C's inclusion in the setting. In line with section 5 of the SEND Code of Practice, this work followed the graduated, good practice "Assess-Plan-Do-Review" approach to identifying needs in the early years.
- 6.2.3. The Code describes how this approach reviews the effectiveness of interventions in enabling children to make progress, provides further information about the precise nature of their needs and informs the next steps to be taken. In the majority of cases, the Area SENCo will produce a support plan which is reviewed with the family, setting and other professionals on a monthly basis. This information then provides robust evidence to inform any subsequent decision to initiate an EHC needs assessment or not.
- 6.2.4. As well as the support provided by the Area SENCo, the nursery made a series of reasonable adjustments to support Child C's inclusion in the setting. These included (but were not limited to) placement of Child C within a room with a higher staff:child ratio (1:3 instead of 1:4) as well as intervention, training and support from the Area SENCo and Speech & Language Therapist. Whilst the Council and nursery believed that these adjustments supported Child C's inclusion in the nursery, the LGSCO's report references concerns raised by Mrs B that her son's needs were not being met.
- 6.2.5. The nursery also made an application to the education service for funding to support Child C from the Supported Childcare Fund (SCF). This was discretionary funding provided at the time by the Council to support settings to meet the needs of a small number of children with emerging or undiagnosed needs. SCF was not available for children who held an EHC plan.
- 6.2.6. By its discretionary nature, the SCF was a set budget capped at an agreed level of expenditure. Unfortunately, funding from this budget was fully committed at the point Child C was referred for support. As such, resources could only be released if another child in receipt of this funding moved on or received funding through an EHC Plan. Therefore, Child C continued to receive support from his nursery through reasonable adjustments and from the Area Special Educational Needs Coordinator and the Specialist Teacher pending availability of additional resource from the SCF.
- 6.2.7. At this point in time, allocation of support from the SCF was not an acknowledgement that an EHC needs assessment may be required. As such, whilst the 'Assess-Plan-Do-Review' approach was being followed, referral for assessment was not felt to be appropriate at this stage. The

LGSCO, however, does not agree with this interpretation and has stated that a child waiting for SCF should have met the threshold for an EHC plan and funding from the Council's high needs budget. As such, this was another point at which an assessment should have been considered and, if not agreed, parents offered their right of appeal.

- 6.2.8. This fund has since been replaced by the Early Years Inclusion Fund. Whilst this is still a capped budget, available resources are more flexible. In addition, referral and allocation processes for this fund have been strengthened with a panel with wider representation to ensure robust allocation of resources and that it is targeted at the most vulnerable children. Where appropriate, an EHC needs assessment may be considered, although resources from the Early Years Inclusion Fund are only available up until the point an EHC plan is finalised. In light of the LGSCO's report, the Council will review current procedures to ensure these are robust and meet legal requirement.
- 6.2.9. At the point the SCF ceased, there were 4 children (including Child C) who did not receive allocated funding. The LGSCO believes that there may have been an injustice caused to these families if the Council failed to consider whether an EHC needs assessment was required or where the EHC assessment process took more than 20 weeks. As such, the LGSCO recommends that the Council write to these families to explain the faults identified by this investigation and provide a remedy in line with that set out in this case.
- 6.2.10. Every request for support is different and it cannot be assumed that other children who were awaiting SCF directly compare with the unique circumstances and needs of this case. The Council considers that the needs of these children were being met through reasonable adjustments within their settings and that we were working with parents to support their child. Of the 3 eligible children who did not receive SCF, 2 (including Child C) subsequently received an EHC plan. The third child moved out of the area shortly after requesting SCF and we are informed that their needs are currently being met without recourse to an EHC plan. In light of this, we will contact the family of the additional child who remained resident in the borough and who did not receive support through the SCF, inviting them to make a case showing that injustice was caused.
- 6.2.11. Although funding was not available through the SCF, as set out above, reasonable adjustments were in place and the Council supported Child C through provision of intervention, guidance & review from the Council's Area SENCo. Mrs B has, however, stated to the LGSCO that she believed that an EHC needs assessment had been initiated at this stage and was surprised to learn that it had not.
- 6.2.12. A formal request to initiate a statutory assessment was submitted to the Council by the nursery on 6 June 2016 and this was agreed 9 days later. The LGSCO's report concludes that, despite the interventions and ongoing work with Child C in the nursery setting, there were a number of points where the Council should have considered an EHC needs assessment earlier than it did – including at the point that the GP wrote to the Community Paediatrician in September 2015 (and when this was

considered at the Multi Agency Referral meeting), when Child C was awaiting support from the SCF and when Mrs B raised concerns that the assessment had not been initiated. We have accepted this view and apologise for not considering the assessment sooner.

6.3. EHC needs assessment process & issue of the EHC plan

- 6.3.1. As set out above, the Council must complete statutory assessments within 20 weeks. Taking receipt of the GP letter in September 2015 as the starting point for the assessment, the LGSCO has calculated that the assessment took 68 weeks to complete.
- 6.3.2. The Council had believed in good faith that the assessment period started on 6 June 2016 when the request for assessment was received from the nursery, with a due date for completion of 24 October 2016. For Child C, however, the plan was finalised on 16 February 2017; some 37 weeks after the Council received the request to initiate assessment from the nursery.
- 6.3.3. Some of the delay was attributable to late professional advice, with further delay resulting from ongoing discussion to produce the EHC plan, in the spirit of co-production, with the parent.
- 6.3.4. The Council monitors the completion of EHC needs assessments on a quarterly basis and acknowledges the challenges with meeting the 20 week timeline. Irrespective of this case, in 2017 both an audit and a review of the EHC needs assessment process were completed in acknowledgement of ongoing challenges to meet the 20 week timeframe. This review identified a number of recommendations to improve and strengthen the process including steps to streamline consideration of assessment requests. Further follow up to this review was undertaken in September 2018. In light of this report, the Council has agreed to revisit these recommendations again to ensure assessment requests are being considered in a timely manner.
- 6.3.5. The Council is firmly committed to co-producing EHC plans with parents and wants to ensure that it hears the representations of parent/carers and, wherever possible, reach agreement regarding a child's needs and provision. It is important to acknowledge that true co-production between a local authority and parent/carers can occasionally take longer than the timeframes stipulated in the Code of Practice. Where a case is more complex, it can be in the interests of the child for the Council to spend more time considering and reviewing representations, rather than seeking resolution through the SEND Tribunal. The alternative would be to issue a low quality plan at 20 weeks, which both parents and Council do not agree with and which would contravene the spirit of co-production.
- 6.3.6. In this case, the Council chose a pragmatic approach: to continue discussion with the parents in a bid to secure agreement over the plan. Unfortunately, it was not possible to reach agreement and the parents requested the plan be finalised, so that they could exercise their right to appeal to the SEN & Disability Tribunal (SENDIST).
- 6.3.7. The Council has previously acknowledged and apologised for delays caused as a result of late receipt of professional advice, as well as further delay compounded when the process became protracted whilst we worked

with Mrs B with the intention of co-producing a plan agreed by both parties. We will further apologise to Mrs B in light of the LGSCO's finding with regards to the delay in initiating and completing the assessment process.

6.4. **Advice from Social Care / Requirement to undertake an assessment under S17 of the Children Act 1989**

- 6.4.1. As part of the EHC needs assessment, Councils are required to seek advice and information in relation to social care. When an EHC needs assessment is initiated, the Council approaches its First Access & Screening Team (FAST) to determine if the child or young person is known to Children's Social Care or Disabled Children's Service (DCS). Where a child is known, the allocated Social Worker is asked to draft a report contributing to the assessment process. Where the child is not known to statutory social care services, social care advice and information is taken from others who know the child well (including their family, the child as appropriate and other involved professions such as SENCo, keyworkers & universal providers). This approach is confirmed in the Council for Disabled Children (CDC's) guidance, "[Securing good quality social care advice for EHC plans](#)".
- 6.4.2. In this case, Children's Social Care were approached for advice, but as Child C was not known to the service at the time, there was no clear evidence to suggest that a care needs assessment (under section 17 of the Children Act 1918) was required. Instead, the Council acknowledged that there was no current social care involvement and, as with other EHC needs assessments, would draw social care needs from other professional advice provided (as set out above and as recommended by the CDC).
- 6.4.3. In this case, following a self-referral by Mrs B, a S17 assessment was ultimately completed for C by the Council's Disabled Children's Service in September 2016. Following assessment, 3 hours per week for social activities through direct payments was recommended.
- 6.4.4. In light of the LGSCO report, the Council's Family Intervention & Support Service will review screening processes for notifications of EHC assessments for children not known to them and how best children's social care can contribute to the EHC needs assessment process and where S17 assessments may be necessary.

6.5. **Policy Context**

- 6.5.1. As set out above, this report is made in the context of regulations governing the role and functions of the LGSCO.

6.6. **Equality Impact Assessment**

- 6.6.1. The report identifies that there were issues regarding the accessibility and transparency of information to understand the EHC process at the time that Mrs B moved into the area. Work already undertaken to improve processes as well as further review and follow up in light of the LGSCO's recommendations will improve transparency of process and accessibility of information for parents / carers seeking support and provision for their children who have or may have SEND.

6.6.2. Notwithstanding this, equality impact assessments will be completed, as appropriate, where EHC planning processes are reviewed and amended.

6.7. **Sustainability**

6.7.1. Not applicable.

6.8. **Consultations**

6.8.1. Section 30 of the 1974 Local Government Act requires the council to make a public notice in more than one newspaper within two weeks of receiving the LGSCO report, and to make the report available at one or more of the Council's offices for 3 weeks. These actions have been undertaken with publication in both the Hackney Gazette and Hackney Today week beginning 27 May 2019. Copies of the LGSCO report were also made available to the public at key Council reception points.

6.9. **Risk Assessment**

6.9.1. The LGSCO's report concludes that current legislation and case law sets out a low threshold for considering and agreeing EHC needs assessments. Furthermore, whilst the Assess-Plan-Do-Review graduated approach used by Hackney to test out interventions in schools and settings (as set out in the SEND Code of Practice) will provide evidence for the Council to make robust decisions about whether to initiate an EHC needs assessment, the LGSCO report suggests that this process should not be considered ahead of consideration of any such decision.

6.9.2. Where robust evidence to warrant initiation of an EHC needs assessment does not exist, there is a risk that a higher number of assessment requests will need to be considered. Alongside this, an increase in the numbers of complaints, requests for mediation and appeals to the SEND Tribunal are also likely if assessments are not agreed due to insufficient evidence.

6.9.3. The Council will mitigate these risks through continued review of processes to ensure EHC needs assessments are considered in a timely way and in line with statutory requirements, alongside regular performance monitoring reported to the Director of Education.

6.9.4. Officers will also continue to work with parents to co-produce EHC Plans. However, this must be balanced against the LGSCO's strong message that EHC needs assessments must be completed within the statutory 20 week timeframe. This carries a reputational risk as the quality of plans acknowledged in the 2017 SEND inspection may be affected. Furthermore, whilst Council officers will continue to work with parents to produce high quality EHC Plans agreed by both parties, if strong co-production with parents cannot be balanced against the requirement for local authorities to meet their responsibilities to complete EHC needs assessments in 20 weeks, the potential for parents / carers to lose faith and confidence in the Council will increase; especially if we cannot afford the time to consider views and maintain dialogue.

6.9.5. Compromising co-production by issuing plans in those circumstances where additional dialogue is required to reach agreement, will also lead to

an increased number of appeals lodged with the SEND Tribunal as the Council may not be able to reach agreement with parents / carers on EHC plans prior to finalisation.

7. CONCLUSIONS

- 7.1. The Council apologises for the difficulties and delays in initiating and completing Child C's EHC needs assessment. With regard to the specific recommendations made by the LGSCO, we have responded as follows:
- i. **Apologise in writing to Mrs B** – A letter of apology was sent to Mrs B on 4 July 2019.
 - ii. **Pay Mrs B £4,150** – payment to Mrs B was made on 28 June 2019.
 - iii. **Review procedures to ensure that when notification is received under Section 24 of the Act, the Council consults parents and other professionals so as to reach a decision within 6 weeks** – The 6 week statutory timeframe is set out in detail in appendix 2. This is a statutory requirement and forms part of the 20 week overall timeframe if assessment is agreed

Hackney processes looking at notification were reviewed in 2017, with recommendations to improve the process subsequently implemented. Furthermore, fieldwork undertaken between March and June 2019 for an Internal Audit follow up report was satisfied that assessment requests were being considered within statutory timeframes. This issue is also a focus of the work of the SEND Partnership Board (a borough wide multi agency group overseeing delivery of SEND services in Hackney) and will be subject to discussion between the Council and the Department for Education
 - iv. **Review and streamline processes to meet the 20-week timescale required to finalise EHC plans** - Processes looking at notification were reviewed in 2017 with recommendations to improve the process implemented. Furthermore, performance regarding the 20 week timeframe is reported quarterly to Hackney Learning Trust's Senior Leadership Team. In light of the LGSCO investigation and findings, this issue is also a focus of the work of the SEND Partnership Board and will also be subject to discussion between the Council and the Department for Education. The outcome of these discussions will inform ongoing review of our processes,
 - v. **Review the arrangements for the new early years inclusion fund** – Robust processes for allocation of the Inclusion Fund were developed to manage the fund when it was implemented in 2017. Information provided on the Local Offer has already been reviewed as part of this implementation. In light of the LGSCO investigation and findings, however, supporting information has already been revisited and reviewed to ensure the application process is clear and that parental & setting expectations are set.
 - vi. **Write to the parents of all children who were placed on the waiting list for (supported childcare) funding** – Where funding could not be

received, settings have a legal responsibility to meet that child's needs. Due to the unique and individual nature of each case, therefore, it cannot be automatically assumed that other children suffered an injustice as a result of not receiving agreed supported childcare funding. The Council wrote to the relevant family on 1 July 2019 asking them if they wished to make a case showing that injustice was caused. We will consider any responses received outside of the complaints process.

- vii. **If other parents, because of this report, complain to the Council about delays in their child's EHC Plan process, the Council should be willing to consider these in the light of the findings on this case** – The Council always considers and responds to concerns raised in line with its complaints policy.

8. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 8.1. The financial implications of the recommendations made by LGSCO, which the Council is accepting, is initially the £4k payment to Mrs B. As indicated in the report, this payment has been processed.
- 8.2. As per the 6th recommendation regarding writing to specific families, there could be further potential liabilities. At this stage, the maximum potential liability, if there was a conclusion that an injustice has been caused and if the Council were to offer a remedy in line with this case, is expected to be no greater than £3k.
- 8.3. As per the 7th recommendation regarding the impact of the LGSCO report, there could be further potential liabilities for the Council. At this stage, this would be difficult to quantify. The review of assessment processes undertaken in 2017 have resulted in improvements. This should reduce the risk of further financial penalties in the future. However, we are not yet in line with the national or inner London average, so there is still a real risk of further complaints.
- 8.4. The recommendations have minimal financial impact on ongoing routine expenditure. The review of processes regarding the discretionary supported childcare fund (2.7) have made processes more robust & transparent. As it stands, those changes are not expected to result in the Council needing to make additional payments.

9. VAT Implications on Land & Property Transactions

Not applicable

10. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

- 10.1. The Report to Cabinet sets out the outcome of the investigation by the Local Government and Social Care Ombudsman (LGSCO) into the complaint by Mrs B. The complaint relates to the way the LA initiate and complete the Education Health and Care Assessment of Child C.

- 10.2. Part 3 of the Children and Families Act 2014 sets out the law in regards to special educational needs. Section 24 of the Children and Families Act 2014 states that an LA becomes responsible for a child if he or she is brought to its attention as someone who has or may have special educational needs. Regulation 3 of the SEND Regulations 2014 provides that the LA must consult with the family upon receiving a request or becoming responsible for a child in accordance with the S24 Children and Families Act 2014 before determining whether it may be necessary for special education provision to be made in accordance with an EHC plan.
- 10.3. The threshold to undertake such an assessment is low and the duty appears to be triggered where a child is brought to the LA's attention. It should be noted that this threshold is lower than what is outlined in the SEND Code of Practice.
- 10.4. Where there is an alleged breach of the duty to assess, parents and young people will have recourse to the complaint process including referral to the LGSCO.
- 10.4.1. Part III of the Local Government Act 1974 (sections 26 (1) and 26A(1) empowers the LGSCO to investigate complaints about 'maladministration' and 'service failure', consider the adverse impact on the person making the complaint and where this has caused injustice, suggest a remedy.
- 10.4.2. Whilst the LGSCO has no power to force the LA to follow their recommendations, it is always advisable for the authority to give due consideration to their recommendations and in the majority of cases, LA's tend to accept the LGSCO recommendations to remedy complaints.
- 10.5. The LA have set out above in section conclusions above how they propose to respond to each of the recommendations made by the LGSCO.

APPENDICES –

- **Appendix 1:** Report of the Local Government & Social Care Ombudsman – EHC Plans (Ref: 17 009 811)
- **Appendix 2:** Statutory timescales for EHC needs assessment and EHC plan development (SEND Code of Practice 2014)

EXEMPT – Not applicable

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

Description of document (or None)

None

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