

## Report of the Monitoring Officer on an Investigation by the Local Government and Social Care Ombudsman

Date of Meeting: 1 October 2019

Director: Jonathan Mair, Corporate Director, Legal & Democratic

### **Executive Summary:**

This is a formal report by the Monitoring Officer and is issued under Section 5A of the Local Government and Housing Act 1989. It follows the publication of findings by the Local Government and Social Care Ombudsman that failings by the former Dorset County Council led to a boy with autism being left without a proper education for two years. Those failings have been found by the Ombudsman to amount to maladministration resulting in injustice to the complainants and their son and also to be part of wider systemic failings.

The purpose of a section 5A Monitoring Officer report is to ensure that the findings of the Ombudsman are brought to the attention of the Cabinet. This reflects the seriousness of a formal finding of maladministration and injustice and is to enable the Cabinet to satisfy themselves that there is an appropriate action plan in place to:

- Ensure that there is no repetition of the failings identified by the Ombudsman and
- Address any wider systemic issues identified by the Ombudsman.

In addition to formally finding the former County Council to have been at fault the Ombudsman has made ten recommendations to Dorset Council as successor council, the first five of which are specifically to address the injustice suffered by the child and his parents. A further five recommendations are of wider application and are system related.

I recommend that all ten recommendations are accepted and acted upon. I also recommend a review to ensure that recommendations made by Ombudsman in eight previous cases involving the former County Council have been fully acted upon.

I am required to by law to consult the Chief Executive as Head of Paid Service and the Chief Finance Officer on the content of this report. In view of the subject matter this report has also been written in consultation with the Executive Director for People – Children.

There is also a requirement that my report and the Cabinet's response to it must be circulated to the balance of Council i.e. the seventy-two councillors who are not members of the Cabinet.

Ahead of the reporting requirements in this paper the Council was required by the Ombudsman to place two public notice announcements in local newspapers to publicise the Ombudsman's report and to make copies of the report available free of charge at our offices. The Council has gone beyond this and has also:

- put a copy of the report on its website
- included an article about it in its SEND e-newsletter and
- issued a press release as soon as the report was published.

That Council's own press release included a [statement from the Cabinet member for Children, Education and Early Help](#) accepting the Ombudsman's findings, giving a full public apology and re-stating the Council's commitment to improving SEND services.

#### **Equalities Impact Assessment:**

As this is a statutory report in response to the findings of the Local Government and Social Care Ombudsman no equality impact assessment has been prepared.

#### **Budget:**

There are immediate budget implications arising from the requirement to make payments totalling £5,600 to the child and his parents. The more significant implications relate to the need to address the wider actions identified by the Ombudsman and to the cost of the ongoing statutory duties upon the council to assess and make provision to meet the needs of children with special educational needs. Those statutory duties are unchanged but the Ombudsman's specific recommendation that the Council:

*"Revises its Local Offer to include details of the alternative provision it will arrange for those children that are not in full-time education."*

means that there will be a need for a further report to the Cabinet setting out that proposed offer and the cost implications. The proposed offer will need to be considered in the context of the current challenging financial position of the Council, and the impact that it will have on the medium term financial strategy.

#### **Risk Assessment:**

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: HIGH

Residual Risk MEDIUM

The Ombudsman has referred not only to maladministration and injustice in this case but also to eight other instances since March 2018 where the former Dorset County Council was found to be at fault over its provision for children with special educational needs. This is why he has referred to systemic issues that need to be addressed and why his recommendations extend beyond addressing the circumstances of this individual child.

Until the Ombudsman's recommendations have been acted upon in full the risk level should continue to be treated as high. The residual risk will only be achieved when the recommendations have been acted upon in full and there is confidence that the Council is meeting its legal obligations to children with special educational needs on an ongoing basis.

**Climate implications:**

The circumstances of this case illustrate why there are climate change implications to be considered in everything Dorset Council does. It is not possible to meet the complex needs of some children at schools close to home. Appropriate provision can involve specialist placements necessitating a significant need to travel and therefore have an impact.

**Other Implications:**

The failings identified by the Ombudsman in this and the previous eight instances all took place under the former County Council. There will though be ongoing risk of service failings and damage to the reputation of Dorset Council until the systemic issues identified by the Ombudsman have been addressed.

**Recommendation:**

That the Cabinet:

1. Note the action taken since receipt of the Local Government and Social Care Ombudsman's report (18 016 599) and accept the Ombudsman's ten recommendations, as set out in paragraphs 3.3 and 3.6, below.
2. Approve the actions identified by the Director of People - Children in response to the Ombudsman's recommendations (paragraphs 3.3 and 3.4 to 3.6, below).
3. Ask the Cabinet member for Children, Education and Early Help and the Executive Director for People – Children to commission a review of the agreed actions arising from the eight previous investigations of Dorset County Council undertaken by the Ombudsman (paragraph 4.5, below)
4. Ask the Cabinet member for Children, Education and Early Help to oversee reporting to the Health and Wellbeing Board on monitoring of the progress made both in addressing the outstanding actions and the review of the eight previous investigations, including a first report to the Board meeting on 30 October 2019.

5. Send a copy of the minutes of this meeting (along with the Monitoring Officer's report) to all Dorset Council councillors as the Cabinet's report of what actions are to be taken to address the findings of the Ombudsman.

**Reason for Recommendation:**

In order to ensure that there is a robust plan in place to put right the issues identified by the Ombudsman, including wider systemic failings.

**Appendices:** None

**Background Papers:**

1. Local Government and Social Care Ombudsman decision summary – "[Dorset County Council leaves boy with special needs without proper education](#)"
2. Dorset Council news release:  
<https://news.dorsetforyou.gov.uk/2019/09/04/ombudsman-publishes-report-after-looking-at-send-complaints-in-dorset/>
3. [Full report by the Local Government and Social Care Ombudsman](#) of an Investigation into a complaint against Dorset County Council (now Dorset Council) (reference number: 18 016 599) 15 August 2019
4. [Local Government and Housing Act 1989](#)

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## 1. Basis of Report

1.1 This is a statutory report issued by the Monitoring Officer under Section 5A of the Local Government and Housing Act 1989.

1.2 The 1989 Act requires that where an authority is operating executive arrangements the Monitoring Officer must in certain circumstances issue a report to the Executive. Those circumstances are where it appears to the Monitoring Officer that a proposal, decision or omission by or on behalf of the Executive constitutes, has given rise to or is likely to or would give rise to any of the following:

- A contravention of any enactment or rule of law
- **Any such maladministration or failure as is mentioned in Part III of the Local Government Act 1974.**

This report concerns the second circumstance i.e. a finding by the Ombudsman of maladministration resulting in injustice.

1.3 As soon as practicable after consideration of the Section 5A report the Executive is required to prepare a report which specifies:

- What action if any the Executive has taken in response to the report
- What action if any the Executive proposes to take and when and
- The reasons for taking the action specified or for taking no action.

The report of the Executive must as soon as practicable be sent to all councillors and to the Monitoring Officer.

1.4 It is suggested that the most appropriate means of discharging the duty set out in paragraph 1.3 of this report is by sending a copy of this report together with the minutes of the 1 October Cabinet meeting to all members of Council and the Monitoring Officer.

## **2. Circumstances of the Ombudsman's findings**

2.1 A summary of the Ombudsman's decision is set out in the first background paper – ["Dorset County Council leaves boy with special needs without proper education"](#)

2.2 In brief the Ombudsman describes how the former Dorset County Council left a boy with autism without proper education for two years after it failed to provide him with appropriate alternatives when it became clear that a mainstream school was not suitable for him.

2.3 The Ombudsman describes a series of failings by the former County Council including:

- **Failing at several key points to initiate an Education Health and Care needs assessment** with the result that a March 2015 plan from a different local authority remains in place and has not been updated in over four years (despite evidence of significant changes in need and requests from the child's school).
- **Effectively endorsing the child's unofficial exclusions from the School and not informing the parents whether it would amend his plan**, thus depriving them of an opportunity to appeal any decision to the SEND Tribunal.
- **Focusing on the wrong thing** i.e. focusing on securing a placement and alternative provision for the child without carrying out an assessment of what his needs actually were. In response to consultations placement providers stated that they were unable to offer the child a place as they could not meet his needs. However, these consultations had been carried out without the Council really knowing what the child's needs were and a confused position

within the Council as to whether these needs were social, emotional and mental health or Autism Spectrum Disorder.

- **Failing to comply with statutory guidance** - by checking that alternative provision made for the child was safe and had clear objectives focusing on “personal and academic attainment”.
- **Failing to check that the full-time alternative provision it arranged was registered.** In this instance the alternative provision arranged by the Council was not OFSTED registered and it lacked several policies, procedures and risk assessments which a school or educational establishment should have in place.
- **Not proactively monitoring the child’s progress** - no one from the Council’s SEN Team attended the annual review meeting held at the school in January 2018. The school oversaw the meeting as the child was still on roll there, but at this point his education was being directed by the Council and someone from the SEN Team should have attended and taken the lead given the Team’s key role in planning and coordinating the child’s education.
- **Failing to comply with its statutory duty to arrange suitable alternative educational provision** – in this respect the Ombudsman recognised that a lack of suitable alternative provision in the area had impacted on the Council’s ability to secure this provision but the Council had sufficient time to resolve these issues but failed to do so.

### 3. Recommendations made by the Ombudsman

3.1 The failings identified by the Ombudsman make for uncomfortable reading.

3.2 His description of the life changing injustice suffered by the child is even more uncomfortable:

*“The Council’s faults have had a significant impact on C’s education and wellbeing. Its failure to assess his needs at an early stage or follow the annual review process means his EHC plan has not been updated since he was at primary school. After this plan was issued in March 2015 he was diagnosed with ASD and ADHD, made a life-changing move across the country, and faced an unsettled home life. If the Council took these factors into account and followed the correct processes it may have prevented the subsequent deterioration in his behaviour. However, it did not do this and C was eventually “unofficially excluded” from school prior to the start of Year 9. Clearly, this has impacted on his ability to undertake his GCSE exams and affected his future prospects.”*

3.3 In order to remedy the injustice to the child and his parents the Ombudsman has made the following five recommendations, below and actions taken to date or proposed are noted below each recommendation):

3.3.1 **Allocates £4,000 of funding to be used to benefit C’s education.** It should consult him and his parents before deciding how this money should be spent. If an

agreement cannot be reached, the money should be put in a trust fund which C can access when he is 18 years old. Importantly, this funding must be over and above that used to provide any ongoing, day-to-day support that C is currently receiving.

**Status of action: ongoing:**

*Action 1 and Action 4 cover the same theme and the Service Manager for SEND is leading on these actions.*

*£4,000 of funding to be used to benefit C's education and a meeting has taken place to discuss C's education with everyone involved in his case and plan what should be done next. The recommendation that this be done within one month of the start of the new school term has been met. The SEND (Special Educational Needs and Disabilities) Service Manager chaired the meeting and one of the Education Psychologists attended. The agenda covered the following topics recommended by the Ombudsman.*

*The meeting discussed whether C requires an EHC (Education and Health Care) needs assessment. It was decided he does and this has been initiated to be carried out in accordance with the SEN Code of Practice. The EHC plan will be updated without delay and this is ongoing. As part of the process C's short and long-term academic objectives are under consideration and whether his current provision will enable him to meet those objectives. This is part of the EHC process.*

*As part of the review of the EHC plan consideration is being given to whether any specialist school or college could offer a more suitable placement and if so whether the Council should use its powers under Sections 96 and 97 of the School Standards and Framework Act 1998 to direct a school or college to admit C.*

*If an agreement cannot be reached on how best to use the £4,000 the money will be put in a trust fund which C can access when he is 18 years old. This discussion is ongoing in the light of the EHC assessment.*

**3.3.2 Pays C £1,000 for the distress its actions caused.** There should be no restrictions on how C should spend this money.

**Status of action: complete.**

**3.3.3 Pays C's parents £300 each to remedy the injustice they were caused.**

**Status of action: complete.**

**3.3.4 Holds a meeting to discuss C's education with everyone involved in his case and plan what it should do next, within one month of the start of the new school term.** It should invite C, his parents, his school, a representative from the farm, and any other relevant party who can give an insight into his needs. It should also ensure the SEN Team chairs this meeting and that one of its EPs attends. Its agenda should encompass the following topics: i. Whether C requires an EHC needs

assessment. If it is decided he does, this should be initiated without delay and carried out in accordance with the SEN Code of Practice. Likewise, if the Council decides an assessment is not required but C's parents disagree, it should inform them of their right to appeal its decision to the SEND Tribunal. ii. When it will amend and update C's EHC plan, be it after an EHC needs assessment or without one. In either case, it should ensure it does this without delay. iii. Identify what C's short and long-term academic objectives are and discuss whether his current provision will enable him to meet those objectives. iv. Consider whether any specialist school or college could offer a more suitable placement. If so but is felt a place would not be offered, the Council should consider whether to use its powers under Sections 96 and 97 of the School Standards and Framework Act 1998 to direct a school or college to admit C. v. Discuss how the £4,000 payment should be used and whether additional provision could be obtained in the short-term to help C achieve his academic objectives.

**Status of action: ongoing**

See action 1, above.

**3.3.5 Writes to C and his parents to apologise for the stress and inconvenience it caused, acknowledging the impact of its faults.**

**Status of action: complete.** In addition to providing a written apology there is ongoing contact with the parents regards the child's education and the necessity to update the EHC needs assessment (see response under action 1, above).

3.4 In order to address the wider systemic failings the Ombudsman has made a further five recommendations. The Executive Director for People – Children intends that the Corporate Director for Education and Learning should lead on these actions which direct the future work of the council in improving the work done with children and the outcomes for children with SEND.

3.5 There is a significant change programme running in Children's Services to address both the structure of the area and to review and develop better working practise so that these situations do not arise in future work. The leadership team in Children's Services, being led by the Executive Director for People – Children, are consulting with staff on these developments.

3.6 As part of this change programme the Corporate Director for Education and Learning will ensure that the following five recommendations are completed:

**3.6.1 Creates and issues staff guidance about EHC needs assessments.** This guidance should refer to the SEN Code of Practice and state the threshold at which the SEN Team should seek to initiate an assessment.

**Status of action: ongoing**

**3.6.2 Develops procedures to help staff when they need to identify and secure alternative provision.** These procedures should refer to the relevant statutory guidance about this matter and the Council's Approved Provider Checklist. They should stress the importance of using this Checklist and considering how any provision identified will help the child achieve their academic objectives or outcomes in their EHC plan. Similarly, the procedures should highlight the importance of monitoring the child's progress and give direction about what staff should do when they are struggling to place a child or find them suitable provision.

**Status of action: ongoing**

**3.6.3 Revises its Local Offer to include details of the alternative provision it will arrange for those children that are not in full-time education.** It should ensure it provides a range of options so it can meet the various needs and circumstances of those children in its area.

**Status of action: ongoing**

**3.6.4 Delivers a briefing to all staff in the SEN Team once the guidance and procedures mentioned above are complete.** This briefing should familiarise staff with the new guidance and procedures, as well as discuss the learning points from this report.

**Status of action: ongoing.**

**3.6.5 Provides complaint handling training to those in the SEN Team that deal with complaints.** This training should focus on the need to address the key points raised by a complainant and investigate anything that might have gone wrong. Likewise, it should emphasise the importance of assessing any injustice the complainant was caused and how this might be remedied.

**Status of action: ongoing.**

#### **4. Further recommendations of the Monitoring Officer**

4.1 It is unusual for the Ombudsman to go as far as to issue a formal finding of maladministration and injustice in this way. It is more usual for the Ombudsman to identify any issues and then to work with a council to identify how the Council can address these.

4.2 There is a context in this case of a series of eight earlier investigations where Dorset County Council was found to be at fault over taking too long to issue EHC

plans, failing to arrange alternative provision and taking too long to complete the annual review process and amend the EHC plan.

4.3 The eight earlier investigations resulted in a series of actions and recommendations which are referred to but are not part of the recommendations in the Ombudsman's current report.

4.4 The Ombudsman comments that:

*“These cases highlight the Council has failed repeatedly to issue EHC plans in a timely manner or arrange suitable alternative educational provision. This is concerning and indicates there are wider, systemic problems that need to be addressed.”*

And that:

*“It is important to note that Dorset County Council was superseded by Dorset Council in April 2019. In addition, the latter has recently appointed a new Director of Children's Services who acknowledges the systemic problems mentioned above and is working to address them. We welcome these developments and believe they provide the new Council with an ideal opportunity to refine its processes and learn from the mistakes of its predecessor.”*

4.5 In view of these further comments I recommend that the Cabinet member for Children, Education and Early Help and the Executive Director for People – Children should commission a complete review of the agreed actions arising from the eight previous investigations undertaken by the Ombudsman. The focus of this review should be to ensure that all of the previous actions identified by the Ombudsman and agreed by the predecessor County Council have been completed and the systemic problems addressed. This work should sit alongside that described in paragraph 3.4 onwards and led by the Corporate Director for Education and Learning.

4.6 The review of the agreed actions arising from the eight previous investigations undertaken by the Ombudsman should be reported to the Health and Wellbeing Board at its meeting on 30 October 2019. The reporting of other ongoing work to address the recommendations of the Ombudsman in report 18 016 599 should be built into the work programme of the Board and monitored until signed off as completed.

Jonathan Mair

Corporate Director – Legal and Democratic and Monitoring Officer

September 2019