

Cabinet

26 July 2022

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

For Decision

Portfolio Holder: Cllr A Parry, Children, Education, Skills and Early Help

Local Councillor(s): All

Executive Director: J Mair, Director of Legal & Democratic

Report Author: Jonathan Mair
Title: Director Legal and Democratic
Tel: 01305 838074
Email: Jonathan.mair@dorsetcouncil.gov.uk

Report Status: Public

Brief 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 Dorset Council was at fault by not adequately meeting a child's educational and special educational needs from 2020 until it identified and placed this child at a special needs school the following year (2021). It also found that there were issues in relation to maintaining good communication and dealing properly with the complaints that were made.

Those failings have been found by the Ombudsman to amount to fault which caused injustice and therefore the Ombudsman has made recommendations for the Council to specifically address the injustice suffered by the child and their family, and also to ensure that similar faults do not occur in future.

The identity of the child and family have been anonymised in this report.

The issues identified by the Ombudsman are by no means unique to Dorset and his findings sit alongside a national focus report [“Out of school, out of sight”](#) in which the Ombudsman shares a number of case studies where things have gone wrong and in which he sheds light on how all councils can learn from them.

Recommendation:

That the Cabinet:

1. Accept the eight recommendations of the Local Government and Social Care Ombudsman, as set out below in Section 3.1 of this report.
2. Adopt as actions to be taken by the Council the further recommendations made by the Ombudsman, as set out and commented upon in Section 3.3 of this report.
3. Note the action taken since receipt of the Ombudsman’s report and agree that the Children’s Services Strengthening Services Board (Chaired by the Chief Executive) should:
 - (a) Oversee implementation of the actions referred to in the second recommendation; and,
 - (b) Review the Ombudsman’s focus report “Out of school, out of sight” and implement any necessary learning from that report.
4. Invite the People and Health Scrutiny Committee to:
 - (a) add the Council’s ongoing performance in addressing the Ombudsman’s criticisms and concerns to the Committee’s forward work programme, and
 - (b) commission the South West Audit Partnership to undertake focused work to provide assurance that the actions being taken in response to the Ombudsman’s report are embedded in procedure and in practice.
5. Send the minutes of this meeting to all Councillors as the Cabinet’s response to the Monitoring Officer’s report.

Reason for Recommendation:

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 and acted upon. There are also legal requirements that my report is sent to all other Dorset Council councillors and that notices of the Ombudsman’s findings are published in a local newspaper.

These transparency requirements reflect the seriousness of a formal finding of maladministration and injustice and are to ensure that the Cabinet and the

Council as whole are satisfied that an appropriate action plan is put in place so that:

- Wider systemic issues identified by the Ombudsman are addressed and
- There is no repetition of the failings identified by the Ombudsman.

The need to avoid any repetition is important in itself. This is all the more important given that in 2019 the Ombudsman identified similar shortcomings in the predecessor County Council and members were assured as to the actions being taken at that time to prevent a repetition.

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 (Cabinet). Those circumstances include where the Local Government and Social Care Ombudsman issues a report making a formal finding of maladministration by the Council, resulting in injustice.

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

- What action if any the Cabinet has taken in response to the report
- What action if any the Cabinet 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 26 July Cabinet meeting to all members of Council and the Monitoring Officer.

2. Circumstances of the Ombudsman's findings

2.1 In brief the Ombudsman describes how Dorset Council was at fault by not adequately meeting a child's educational and special educational needs February 2020 and November 2021. The investigation also found fault through shortcomings in the way in which the child's Education, Health and Care Plan was reviewed. In addition there were criticisms of communication with the child's mother and the way we handled her complaints.

2.2 An article summarising the circumstances and findings can be [read here](#). The full report can be [read here](#).

2.3 Commenting on the complaint the Ombudsman, Michael King, said:

“Councils have a duty to ensure alternative education is provided for children who are unable to attend school for whatever reason, and they cannot delegate this duty to schools or other providers.

“In this case, a boy with special needs has been without proper education for a significant period.

“I’m also issuing a special report today highlighting this case is not unique – far too many children across the country are missing out on the vital support they need to achieve their full potential because they are being denied their basic right to an education.

“I am pleased Dorset Council has readily agreed to the recommendations I have made to put things right in this case. I hope the changes it will make to the way it keeps track of children out of school, and the services it provides for them, will ensure other children are not disadvantaged like this child.”

In addition to his role investigating complaints of maladministration the Ombudsman works to help all councils to learn from complaints. His report on this particular child sits alongside a national focus report [“Out of school, out of sight”](#) in which he shares case studies from a number of local authorities where things have gone wrong and in which he sheds light on how all councils can learn from them. I am therefore recommending that, alongside the actions arising from recommendations set out in sections 3.1 and 3.2 below, the Children’s Services Strengthening Services Board should review and implement any learning from “Out of school, out of sight”.

3. Recommendations made by the Ombudsman

3.1 To recognise the injustice caused to Ms B and C the Council should, within one month of the date of the final report from the Local Government Ombudsman (LGO):

3.1.1 apologise in writing to Ms B;

3.1.2 make a payment of £250.00 to recognise the lost opportunity for C to have received provision between May and July 2020 when it seems unlikely the Council made “reasonable endeavours” to provide education after his EHC Plan was introduced;

3.1.3 make a payment of £6,300.00 to recognise the impact of lost education and special education provision on C. This comprises

£4,800.00 for the periods February to July and September to October 2020 when no alternative provision was made and C was transferring to secondary school. This is calculated at a rate of £600.00 per month. For the three month period from November 2020 to January 2021 when some partial provision was made we recommend a further payment of £1,500.00 which is calculated at a monthly rate of £500.00;

3.1.4 make a payment of £250.00 to recognise the lost opportunity to comment on the draft EHC Plan in February 2021 or to appeal to the SEND tribunal when the final Plan was issued in the same month;

3.1.5 a payment of £750.00 to C to recognise the avoidable distress and anxiety caused by the extended period of uncertainty around his education and special educational needs provision and the particular impact of this on him given his propensity for stress and anxiety;

3.1.6 a payment of £750.00 for Ms B to recognise the impact on her of the failure to make adequate provision for C in the form of lost opportunity, stress and frustration;

3.1.7 a payment of £250.00 to recognise the avoidable time and trouble Ms B was caused in having to complain to the Council and the Ombudsman's office for the matter to be resolved; and

3.1.8 a further payment of £250.00 to recognise the avoidable frustration caused by the Council's poor communication with Ms B over a protracted period of time.

3.2 The status of Dorset Council's action to respond to the recommendations listed above (in sections 3.1.1 – 3.1.8), is that the written apology has been provided and the total sum of the agreed financial remedy awarded by the LGO has been paid to the family. In addition to the written apology, the SEND service is maintaining regular contact with the family to ensure they are receiving sufficient support for their child.

3.3 To ensure that similar faults do not occur in future, the LGO made a number of service improvement recommendations (*set out below*) and the Corporate Director for Education and Learning has provided an update against each recommendation:

3.3.1 *Ensure that annual reviews and transfer reviews will be tracked for all children with an EHC Plan to ensure that these are arranged, that they take place and that the proper action is taken to then amend, maintain or cease a plan and that this happens without delay.*

Position statement on the status of this recommendation:

Dorset Council has improved its approach to Annual Reviews so that our Special Education Needs and Disabilities (SEND) service schedule annual reviews appropriately across the year. Each member of staff is able to understand the risks and vulnerabilities of the children and young people they support in order to prioritise those with highest need and to meet the requirements. This includes a focus on all key phase transfers of children as they change phases of education. We work closely with schools and our Special Educational Needs Coordinators in schools (SENCOs) to ensure that support to children and young people takes place to ensure the timeliness of Annual Reviews.

Annual Reviews are part of the Local Authority quality assurance process. Quality assurance audits of Education, Health and Care Plans and reviews happen on a monthly basis and learning is identified at both an individual but also thematic level to support our continuous improvement and workforce training and development.

Our revised Annual Review process and templates ask those present at the review to track amendments on a child or young person's Education, Health and Care Plan to make sure any changes required can be completed within statutory timescales.

Dorset Council has invested in SEND Case Workers to the Locality Teams who work alongside the SEND Provision Leads and take the lead for scheduling Annual Reviews. This has given more capacity to the frontline workforce to ensure that reviews take place appropriately and that necessary amendments take place within the statutory timeline.

Dorset Council is investing in a new case management system which we are scheduled to launch during the 2022/23 academic year subject to procurement, to further develop our case management tools and enable parent engagement with the council through a portal alongside our existing methods of communication.

- 3.3.2 *Improve its record-keeping and communication with parents to ensure that parents know who their child's allocated SEN officer is, parents are informed of changes and there is an efficient handover of information and outstanding tasks when new staff take over a case.*

Position statement on the status of this recommendation:

Dorset Council has invested in business intelligence dashboards to support our managers and leaders to oversee and monitor performance. This has enabled managers to have improved oversight of activity and is reported to through our strategic governance and performance monitoring boards.

Dorset Council launched its SEND Customer Charter working in partnership with our Parent Carer Forum in May 2022. This charter sets out how front line staff will communicate with families and our commitment to working with our children, young people and their families ([Children and Families Charter and Service Standards in SEND for those requesting or with an Education Care and Health Plan - Dorset Council](#))

Whenever there is a change in allocated worker, this will be communicated to the families within 10 working days. Team Managers will take responsibility to ensure that case records are up to date prior to staff leaving; where possible, a handover will take place between the outgoing and incoming allocated worker.

- 3.3.3 *Improve its handling of complaints to ensure that responses are provided according to the published process, that any verbal agreements to resolve complaints result in clear action and are clearly recorded.*

Position statement on the status of this recommendation: A single tracking mechanism for all SEND complaints and appeals is in place and has oversight from the SEND strategic lead.

Monthly meetings with the Team and Service managers with the Complaints team to ensure consistency of approach and response to complaints.

Service Managers in each of the Council's six localities have oversight of all SEND complaints to ensure that these are responded to on time and appropriately.

Verbal agreements to resolve complaints will be recorded with clear actions identified on each child or young person's record.

We have invested in our case recording system, to ensure that the case note function is consistently used. We are investing in a new case management system which we are scheduled to launch during the 2022/23 academic year subject to procurement, to further develop our case management tools.

- 3.3.4 *Ensure that suitable alternative provision is made for children who require it and more broadly what steps it will take to ensure*

that it can access to a supply of suitable alternative provision that is able to meet a range of children's educational and other needs. In addition, the Council should provide us with details of how it will track alternative provision that is being made to children and how it will ensure that support for children who are out of school meets their educational and special educational needs.

Position statement on the status of this recommendation:

Dorset Council commissions four pupil referral units that provide alternative provision to over 220 children. As part of the Council's Special Educational Needs and Disabilities Capital Strategy 2020-25, the Council will create approximately 500-600 new specialist places across Dorset between 2020 – 2025 with an approved capital investment fund of £40m which will include increased provision with Social, Emotional and Mental Health learning needs.

Dorset Council is implementing a new model of alternative provision (AP) through a framework to manage independent providers which is used where needed, focussed on high quality provision which enables children and young people to make progress. This includes currently tendering for a new Supporting Progress and Inclusion Framework which requires all provision to be high quality, locality based, delivered by suitably qualified practitioners, which ensures progress for children and young people, with clear start and end dates and arrangements for transition to the next setting or post 16 pathway. This will be operational from September 2022.

The Council maintains oversight of our children and young people that are not in full time education through a fortnightly Inclusion Monitoring Board attended by key members of Children's Services and the Youth Justice Service, to ensure that children are returned to full time education rapidly. This includes children out of education, those on reduced timetables and children in alternative provision. The highest priority is given to children with an EHCP, and children supported by a social worker.

- 3.4 Formal findings of maladministration and injustice are rare in Dorset. This is only the second time since the formation of Dorset Council that the Ombudsman has issued such a report. The Ombudsman reserves such findings for the most serious of situations, as where there is a history of complaint or other evidence of serious failings.

4. Conclusion

- 4.1 It is clear that colleagues take these matters seriously and through improvement services have taken steps to learn from and address the Ombudsman's criticisms and concerns. The period of time during which

the child was without an education was whilst the Service was going through its transformation which has delivered improvement since that time. The Council recognises that there is more to do and this continues to be a focus for the service.

- 4.2 I would though be failing in my responsibility if I were not to draw to the specific attention of members the similarity between the issues raised through the current findings and those of the Ombudsman when he made [formal findings of maladministration and injustice in 2019](#) by the predecessor County Council. In paragraph 68 of his current report the Ombudsman comments:

*“To ensure that similar faults do not occur in future the Council has also agreed to make a number of service improvements. These take account of recommendations made on other recent complaints where we have identified faults that are similar to those identified here and also a report against the former Dorset County Council (case reference 18 016 599) where Dorset Council, as the newly formed unitary authority for the area, undertook to make systemic improvements to its service. **Despite all these agreements and assurances it is concerning that we continue to see the same faults.**”*

- 4.3 Accordingly, in addition to the recommendation that the implementation of improvement actions should be reported to the Children’s Services Strengthening Services Board, my advice is that there is also a role for the People and Health Scrutiny Committee. That role should be focused upon seeking assurance that the improvement actions have been embedded so that there is no further repetition.

5. Financial Implications

The direct financial implication to Dorset Council of the financial remedy related to this complaint as awarded by the LGO equates to £8,800.

6. Climate Implications

None

7. Well-being and Health Implications

Being without a proper education for a significant period has impacted on the child and their family.

There will have been a negative impact on the child by not meeting their educational and special educational needs when there was a gap in provision. The implications and action taken by the Council to put this right are set out in this report.

8. Other Implications

None

9. Risk Assessment

- 9.1 As part of work to support the recommended role of the Scrutiny Committee it would be helpful if the Audit Partnership could be asked to provide an assessment of risk based upon testing success in embedding actions.

10. Equalities Impact Assessment

Not used

11. Appendices

[Summary article published by the Ombudsman](#)
[Full report of the Ombudsman - Dorset Council \(21 002 722\)](#)
[Report of the Ombudsman from 2019](#)
[The Ombudsman's focus report, "Out of school, out of sight"](#)

12. Background Papers

None