

WEST NORTHAMPTONSHIRE COUNCIL

WNC Audit and Governance Committee

14th of June 2023

Report Title	Local Government and Social Care Ombudsman Report
Report Author	Luiza Morris-Warren, Assistant Director for Customer and Corporate Services, on behalf of Catherine Whitehead, Monitoring Officer

List of Approvers

Monitoring Officer	Catherine Whitehead	07/06/2023
Chief Finance Officer (S.151)	Martin Henry	06/06/2023
Communications Lead/Head of Communications	Becky Hutson	06/06/2023

List of Appendices

Copy of Public Report Ref: 21018799 30th of March 2023

1. Purpose of Report

- 1.1 This report informs The Audit and Governance Committee of the Local Government and Social Care Ombudsman's (LGSCO) published findings in relation to a complaint about Education and Children's Services - Special Educational Needs (SEN) provision and Education, Health and Care (EHC) plans.
- 1.2 A Public report is issued by the Local Government and Social Care Ombudsman's office when it is considered that it is in the public interest to highlight a particular issue or problem that may affect more than one person/ family.

2. Executive Summary

2.1 Mr and Mrs X complained the Council failed to support their child, J's, special educational needs and did not provide them with an appropriate educational placement for two years. The findings were related to the Authority's failures to:

- review and amend J's Education, Health and Care plan since 2018;
- provide a suitable educational provision for J since March 2020;
- identify and provide an appropriate school place for J;
- provide an appropriate remedy or make the change it identified after it upheld Mr and Mrs X's complaint about the same.

2.2 Mr and Mrs X stated this caused J significant physical and mental distress and they missed two years of education. It also caused J's sibling and Mr and Mrs X distress and frustration.

2.3 The LGSCO found fault against the Council causing injustice to the Complainants and specific recommendations have been made.

3. Recommendations

3.1 The Council has fully accepted the recommendations identified to remedy the complaint. The Audit and Governance Committee is asked to note the findings of the report and the remedial actions put in place by the service following the publication of the report.

4. Reason for Recommendations

4.1 The Council is required to consider the report and confirm within three months the action it has taken to respond to the findings and recommendations.

4.2 Under the *Local Government Act 1974, section 31(2), as amended*, the Council is required to share the report at its full Council, Cabinet or other appropriately delegated committee of elected members and evidence this to the Local Government and Social Care Ombudsman.

4.3 In addition, Local Government and Housing Act 1989, Section 5 requires that the Monitoring Officer of a Local Authority prepares a report to the Authority with respect to any cases where maladministration or failure has been found.

5. Report Background

5.1 Section 30(3) of the Local Government Act 1974 requires the Ombudsman to report, without naming or identifying the complainant or other individuals, where findings of maladministration have been made.

5.2 The LGSCO has published the report on their website on or after 30 March. The Authority has also made this known through its website and social media, as required by the Ombudsman.

5.3 Section 30 of the 1974 Act requires the Council to place two public notices in local newspapers and/ or newspaper websites. This has been done. Copies of the report have also been made available free of charge at our offices.

6. Issues and Choices

6.1 The Education service have considered the findings of the report and took the following actions:

All the actions that were stated by the LGSCO for the family involved have been completed and the child is attending a residential setting now.

All the other families have been written to directly by the council to let them know that there may be an issue here as directed by the LGSCO. One parent already had a judgement from the LGSCO, so that has been dealt with separately. The other parents have been spoken to by EHC officers, whenever possible, to inform them that compensation can be paid.

Auditing of cases was carried out to identify any other similar cases. We currently have one other case being investigated by the Ombudsman, however this is a different issue to the original complaint that led to the public report being issued.

We do currently have 23 children and young people without a school place. Most of these now have one identified to start shortly or in September. They are overwhelmingly young people who have recently moved into West Northants with an EHC Plan and are looking for a school place. All of them will have tuition in place already, or it has been offered.

6.2 In terms of longer-term actions to address the findings of the report, the service has done the following:

Working with our special school colleagues in order to ensure that needs are being met. Where this isn't possible, independent providers are used to meet specific needs.

For the other cases identified who did not have a school place, the EHC team meet on a weekly basis to see how we can move these forward. Most of those who do not have a school place for a longer period of time have very significant Social, Emotional and Mental Health needs that often display violent and aggressive behaviour. In order to address this need, we are expanding The Gateway School by approximately 50 places and within that we are planning a small provision for those with significantly high level of need.

7. Implications (including financial implications)

7.1 Resources and Financial

In SEN complaints the LGSCO are usually seeking to remedy a shortfall in the provision specified in the child's statement of SEN, or an injustice caused by the delay in completing the assessment and statementing process.

In this instance, a financial remedy totalling £7,125 has been identified by the Ombudsman to acknowledge the injustice caused to the family.

The Council has been asked to:

- pay Mr and Mrs X £5,125 to be used for J's benefit to recognise the impact of the lost education on J and the effect on J's wellbeing

- pay Mr and Mrs X £1,000 to recognise the distress and harm caused to J by the Council's failure to provide an appropriate school; and
- pay Mr and Mrs X a further £1,000 to recognise the frustration, distress, uncertainty and eroded trust in the Council caused to them.

Additionally, to ensure that the Council puts things right for others identified to have experienced injustice because of the findings of this complaint, it was recommended that the Council reference the LGSCO guidance on remedies and make payments as appropriate to other families found to be in a similar situation.

Where fault has resulted in a loss of educational provision, the Ombudsman's guidance recommends a remedy payment of between £200 and £600 a month to acknowledge the impact of that loss. The figure should be based on the impact on the child and take account of factors such as:

- the severity of the child's SEN;
- any educational provision – full-time or part-time, without some or all of the specified support – that was made during the period;
- whether additional provision now can remedy some or all of the loss;
- whether the period affected was a significant one in a child's school career – for example, the first year of compulsory education, the transfer to secondary school, or the period preparing for public exams

A total of £48,600 was spent to remedy the above.

7.2 Legal

The Council has a statutory duty under S19 of the Education Act 1996 to provide full-time education where a child cannot attend school because of exclusion, medical reasons, or 'otherwise'. Councils usually expect schools to arrange off-site provision in the first instance, but the duty to provide full-time education remains with the Council. There may be an overlap between SEN, admissions and S19 requirements in some cases, and for this, departments within the Authority are expected to work together.

7.3 Risk

There is a risk with the publication of any public report identifying maladministration that there is an increase in the number of complaints received from other families in similar situations. The service is proactively addressing similar cases, as outlined above. There isn't however an option to not publish this report, so mitigations will be put in place should these additional complaints materialise.

7.4 Consultation and Communications

A communications plan is in place to accompany the publication of the report by the LGSCO, as well as any other similar cases. At time of publication of the report, the Council took steps to support this by informing the public of its outcome in line with prescribed requirements, including:

- Issuing letters to the identified families
- Informing colleagues and stakeholders of the recommendations and actions being taken
- Adding information onto the WNC website including a proactive news article
- Placing public notices in the local media within two weeks of publication.

In addition to these steps, the Council will continue to inform and engage the public on the objectives and outcomes of its SEND improvement plan, which aims to further develop provision of places for children with special educational needs and disabilities in West Northamptonshire.

7.5 Consideration by Overview and Scrutiny

The Audit and Governance Committee is receiving a copy of the report for consideration in June 2023.

7.6 Climate Impact

There are no climate implications in the reporting of the findings.

7.7 Community Impact

The findings of the LGSCO report have no direct implications on the community.

8. Background Papers

Report by the Local Government and Social Care Ombudsman Investigation into a complaint about West Northamptonshire Council (reference number: 21 018 799)