

# Public Document Pack



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DE4 3AG

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PUBLIC

To: Members of Governance, Ethics and Standards Committee

Wednesday, 23 June 2021

Dear Councillor,

Please attend a meeting of the **Governance, Ethics and Standards Committee** to be held at **2.00 pm** on **Thursday, 1 July 2021** in Council Chamber, County Hall, Matlock, Derbyshire, DE4 3AG, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Helen E. Barrington'.

**Helen Barrington**  
**Director of Legal and Democratic Services**

## **AGENDA**

### **PART I - NON-EXEMPT ITEMS**

1. Apologies for absence  
To receive apologies for absence (if any)
2. Declarations of Interest  
To receive declarations of interest (if any)
3. Minutes (Pages 1 - 4)

To confirm the non-exempt minutes of the meeting of the Governance, Ethics and Standards Committee held on 04 March 2021.

4. Report of the Local Government & Social Care Ombudsman - Investigation Into Complaint No 18/000/932 Against Derbyshire County Council (Pages 5 - 36)
5. Review of Standards Regime (Pages 37 - 40)

PUBLIC

**MINUTES** of a meeting of the **GOVERNANCE, ETHICS AND STANDARDS COMMITTEE** held on 04 March 2021 at County Hall, Matlock

**PRESENT**

Councillor C Short (in the Chair)

Councillors N Atkin, K Buttery, C Dale, L Grooby, W Major, and C Moesby.

Apologies for absence were received from Councillor J Coyle, K Gillott, L Newby MBE and I Orford (Independent Persons).

**06/21** **MINUTES RESOLVED** that the minutes of the meeting of the Governance, Ethics and Standards Committee held on 19 January 2021 be confirmed as a correct record and signed by the Chairman.

**07/21** **AMENDMENTS TO THE CONSTITUTION** Amendments to Appendix 9 – Officer Employment Procedure Rules had been proposed with regard to the arrangements for the appointment of Senior Officers. The Rules required a Panel to be formed from members of the ACOS Committee. However, it had been proposed that the members best placed to consider appointments were those holding the relevant portfolio.

In accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 as amended, an appointment panel must include at least one member of the Cabinet. An appointment panel was also required to be politically balanced.

Therefore, in order to meet legislative requirements and to ensure that those members best placed to consider appointments were on the panel, it was proposed that the panel should comprise at least three members, including the Cabinet Member or Cabinet Members holding the relevant portfolio(s), the Shadow Cabinet Members and an additional Member from the Appointments and Conditions of Service Committee.

It was proposed that paragraphs 3(d) and 3(f) of Appendix 9 – Officer Employment Procedure Rules be amended to read as follows:

*Paragraph 3(d)*

*The full Council will approve the appointment of the Head of Paid Service and Executive Directors following the recommendation of such an appointment by a politically balanced Panel of at least three members formed of the Cabinet Member or Members holding the relevant portfolio or portfolios, the Shadow Cabinet Members and an additional Members from the Appointments and Conditions of Service Committee as necessary to balance the Panel. Where the*

*Cabinet Member holding one of the relevant portfolios or one of the Shadow Cabinet Members was unable to attend, they may be substituted for a Member of the Appointments and Conditions of Service Committee, provided that the Panel included at least one member of the Cabinet and remained politically balanced. Arrangements for forming the Panel would be undertaken by the Director of Organisation Development and Policy.*

*Paragraph 3(f)*

*A politically balanced Panel of at least three members formed of the Cabinet Member or Members holding the relevant portfolio or portfolios, the relevant Shadow Cabinet Members and additional Members from the Appointments and Conditions of Service Committee as necessary to balance the Panel, would appoint the Council's Monitoring Officer and other officers falling within paragraph (c ) above, except the Director of Public Health. The Panel must include at least one member of the Cabinet. Where the Cabinet Member holding one of the relevant portfolios or one of the Shadow Cabinet Members was unable to attend, they be substituted for a Member of the Appointments and Conditions of Service Committee, provided that the Panel included at least one member of the Cabinet and remained politically balanced. Arrangements for forming the Panel would be undertaken by the Director of Organisational Development and Policy in conjunction with the Head of Paid Service; or by the Head of Paid Service if the appointment was of the Director of Organisation Development and Policy.*

A further correction needed to be made at paragraph 7, where the reference should be to paragraph 3(c), namely the list of officers who were not the responsibility of the Head of Paid Service and the specific reference to assistants of political groups should be removed as follows:

Any action against these officers was the responsibility of the Head of Paid Service as delegated to Executive Directors for their service area under the Officer Scheme of Delegations, and decisions regarding action against these officers may not be made by Councillors.

**RESOLVED** that the Committee considered the proposed amendments to the Constitution as detailed in the report and recommended them to the Council.

**08/21 COMPLAINTS RECEIVED AGAINST COUNCILLORS PURSUANT TO THE CODE OF CONDUCT FOR ELECTED MEMBERS FOR THE PERIOD 01 JULY 2020 TO 31 DECEMBER 2020**

The Council's Procedure for considering complaints that Councillors had breached the Code of Conduct, provided that the Monitoring Officer, in consultation as appropriate with one of the Independent persons from the Standards Committee, decided how complaints should be dealt with. Decisions were made as to whether or not complaints should be investigated and whether or not they should be referred on to the Standards Committee for consideration.

In order to support the Monitoring Officer with the management of complaints, the Committee was kept informed of complaints received against Councillors on an annual basis. The last report had been presented to the Committee in October 2020.

During the period from 1<sup>st</sup> July 2020 to 31<sup>st</sup> December 2020, one complaint had been received and determined. The complaint was from a member of the public that the Councillor had spoken in an inappropriate and disrespectful manner. The complaint was not upheld and did not fall within the remit of the Code.

Two complaints submitted during this time period remained under consideration and details would be provided within the next report.

One complaint remained outstanding at the time of the last report. That complaint had now been resolved. It had been found that complaints regarding the failure to champion the needs of residents and a failure to treat others with respect were not upheld. However, a third complaint regarding dealing with representations fairly, appropriately and impartially was potentially upheld, but found not to be sufficiently serious to warrant investigation.

**RESOLVED** that the Committee note the complaints made that Members' had breached the Code of Conduct.

**09/21**      **ANNUAL REPORT OF THE INDEPENDENT RENUMERATION**  
**PANEL**      The Council was required to adopt and publish a Members' Allowances Scheme and to consider recommendations from the Independent Remuneration Panel.

The Panel recommended that all allowances should remain the same for 2021/2022 as in the current scheme and also set out its intended work programme for 2021/2022. The Panel also sought to recruit two further members to the Panel in light of one member having retired at the end of 2020 and a further member being due to retire in June 2021, both having served two full terms of office.

The Committee was also asked to consider amendments to Appendix 15 – Members' Allowances Scheme within the Constitution. The power to suspend or disqualify a Member in the Local Government Act 2000 was repealed by the Localism Act and this provision now only applied to Wales. Therefore, sections 11 and 12 of the Members' Allowances Scheme as detailed below, needed to be removed from the Constitution.

### ***11. Withholding of Payments Made to Members***

*a) Where a Member was suspended or partially suspended from their responsibilities or duties as a Member of the County Council in accordance with Part III of the Local Government Act 2000, or regulations made under that part,*

*the part of either Basic or Special Responsibility Allowances payable to that Member in respect of duties or responsibilities from which they were suspended or partially suspended may be withheld by the County Council. The full Council would make any such decision.*

### **12. Recovery of Payments Made to Members**

*Where a payment had been made to a Member that related to a period where either the Member concerned: -*

*a) was suspended or partially suspended from their duties and responsibilities as a member in accordance with Part III of the Local Government Act 2000 or regulations made under that part.*

**RESOLVED** that the Committee considered the report of the Independent Remuneration Panel, including the proposal to recruit two members to the Panel, and the amendments to the Constitution as detailed in the report and recommended them to Council for approval.



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**1 JULY 2021**

**Report of the Director of Legal and Democratic Services**

**REPORT OF THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN  
- INVESTIGATION INTO COMPLAINT NO 18/000/932 AGAINST  
DERBYSHIRE COUNTY COUNCIL**

**1. Purpose**

- 1.1 To inform the Governance, Ethics and Standards Committee of a recent case investigated by the Local Government and Social Care Ombudsman (LGSCO) who has made a finding of fault by the Council causing injustice to the complainant.

**2. Information and Analysis**

- 2.1 Members are aware that if an individual is dissatisfied with the service provided by the Council he/she may complain under the Council's Corporate Complaints Procedure. If a complainant remains dissatisfied they are able to refer the complaint to the Local Government and Social Care Ombudsman. If the LGSCO decides to investigate a complaint he will determine whether, in his opinion, the Council has been guilty of "maladministration" and if so whether the complainant has sustained "injustice" in consequence.
- 2.2 Section 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to her that there has been maladministration in the exercise of its functions. This duty has arisen in respect of this finding of maladministration by the LGSCO because the LGSCO has

conducted an investigation. The Monitoring Officer's report was considered by Cabinet on 17 June 2021 and a copy of the report has been provided to each member of the Council in accordance with statutory requirements. A copy of the report to Cabinet which contains the detail of the complaint, a copy of the LGSCO's report and the Council's response is attached at Appendix 2.

2.3 The Council's Constitution provides that one of the roles and function of the Governance, Ethics and Standards Committee is '11. To receive regular reports on the of the Corporate Complaints process, Local Government Ombudsman referrals and to recommend revisions to related policies and procedures as appropriate'. This is the basis on which this report is submitted to this Committee.

2.4 Members of the Committee will note that from the report to Cabinet that the Council has accepted the LGSCO's findings and agreed to the recommendations. The Council has already apologised fully to Ms X for the faults identified and paid Ms X on behalf of herself and Z, £1,000. In addition, it is important to recognise that significant change has taken place within the SEN assessment team to address the matters that have arisen in the history of this complaint. It is therefore proposed that no further revisions to the Council's policies and procedures are recommended at this stage.

### **3. Alternative Options Considered**

3.1 Not to report the LGSCO report to Governance, Ethics and Standards Committee, however the remit of the Committee included in the Constitution envisages such reports will be considered.

### **4. Implications**

4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **5. Consultation**

5.1 Not applicable.

### **6. Background Papers**

6.1 None identified.

### **7. Appendices**

7.1 Appendix 1 – Implications.

7.2 Appendix 2 – Report to Cabinet dated 17 June 2021 and Report of the Local Government & Social Care Ombudsman

## 8. Recommendations

That Committee:

- (a) notes the findings of the Local Government and Social Care Ombudsman set out in the report at Appendix 2 and the actions which have been taken by the Council in response to that report and more generally to prevent further escalations of complaints;
- (b) notes that the report was considered by Cabinet on 17 June 2021 and circulated to all members of the Council; and
- (c) confirms that no revisions to the Council’s policies and procedures are recommended following consideration of the report.

## 9. Reasons for Recommendations

9.1 To ensure compliance with the Council’s Constitution.

**Report Author:** Helen Barrington    **Contact details:** helen.barrington@derbyshire.gov.uk

**This report has been approved by the following officers:**

<b>On behalf of:</b>  Director of Legal Services and Monitoring Officer Director of Finance and ICT Managing Executive Director Executive Director(s)	
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## **Implications**

### **Financial**

- 1.1 Payments have already been made to the complainant in accordance with the recommendation of the LGSCO.

### **Legal**

- 2.1 The Local Government and Social Care Ombudsman's powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. The LGSCO may investigate complaints of maladministration causing injustice.
- 2.2 The LGSCO cannot question whether a Council's decisions are right or wrong simply because the complainant disagrees with them. He must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3)).
- 2.3 Section 31 of the Local Government Act 1974 requires a report to be submitted to "the authority" when a report on maladministration is received from the Local Government and Social Care Ombudsman. The specific requirement is that the report to "the authority" is made to the "executive" i.e. Cabinet (s.25(4ZA) Local Government Act 1974).
- 2.4 The Director of Legal and Democratic Services' report is made to the "executive" under the Director's role of Monitoring Officer (s.5A Local Government and Housing Act 1989). In the role of Monitoring Officer the Director of Legal and Democratic Services is also obliged to consult with the Head of Paid Service and S151 Officer when preparing the report. The report must be sent to each member of the Council and Cabinet must meet to consider the report within 21 days of the report being sent to the Executive.
- 2.5 The Council is required to give public notice by advertisements in two local newspapers stating that copies of the LGSCO's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974). In view of Covid restrictions the Council intends to go further than this and the public notices will state that the Council will send a copy of the report by post or email and it will also be available on the Council's website and the LGSCO's website.

2.6 The LGSCO's recommendations are not legally enforceable although it is extremely unusual for a Council not to accept them. The Council must inform the LGSCO of the actions it proposes to take within 3 months of the date on which the Council received the report. If the Council fail to do this or the LGSCO is not satisfied with the action proposed by the Council then the LGSCO can issue a further report.

2.7 The Council's Constitution provides that one of the roles and function of the Governance, Ethics and Standards Committee is:

*'11.To receive regular reports on the of the Corporate Complaints process, Local Government Ombudsman referrals and to recommend revisions to related policies and procedures as appropriate'.*

This is the basis on which this report is submitted to this Committee.

### **Human Resources**

3.1 None directly arising out of this report.

### **Information Technology**

4.1 None directly arising out of this report.

### **Equalities Impact**

5.1 None directly arising out of this report.

### **Corporate objectives and priorities for change**

6.1 None directly arising out of this report.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None directly arising out of this report.

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**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
Derbyshire County Council  
(reference number: 20 000 611)**

**22 February 2021**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

### Key to names used

Ms X	The complainant
Z	Her son

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## **Report summary**

### **Education and Children's Services – Special Educational Needs and Disability Assessments and Reviews**

Ms X complained the Council delayed carrying out her son's annual review, issuing his final amended Education, Health and Care (EHC) Plan and consulting with secondary schools.

#### **Finding**

Fault found causing injustice and recommendations made.

#### **Recommendations**

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice identified in this report, within three months of the date of this report the Council has agreed to:

- apologise to Ms X for the faults we have identified; and
- pay Ms X on behalf of herself and Z, £1,000 to acknowledge the distress Z experienced when he was unable to transfer to secondary school at the same time as his peers for a whole school year and for the unnecessary frustration, distress and time and trouble Ms X experienced because of the Council's faults.

Within six months of the date of this report the Council should review its processes to ensure it is carrying out annual reviews, issuing decision notices and finalising amended Education, Health and Care Plans in line with the statutory guidelines.

The Council has accepted our recommendations.

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## The complaint

1. Ms X complained the Council failed to:
  - carry out her son, Z's, annual review in line with the statutory timescales;
  - consult with secondary schools in a timely manner;
  - issue Z's final amended Education, Health and Care (EHC) Plan within the statutory timescales when he transitioned to secondary school;
  - ensure Z received a suitable education from September 2019 to June 2020 when she appealed to the Tribunal;
  - communicate appropriately with her; and
  - deal with her complaints in a timely manner.
2. As a result, Z had to remain at primary school for an additional school year and Ms Z says that during this time only received part of the Year 7 curriculum. Ms X said this led to a deterioration in Z's behaviour and feelings of low self-esteem and isolation.

## Legal and administrative background

### The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
5. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
6. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
7. The law says that a parent or carer can appeal to the tribunal after the Council has issued a final EHC Plan. The Council issued Z's EHC Plan in July 2019 and at this point Ms X could have appealed the placement named in Z's Plan. In this case we have decided to exercise our discretion and also investigate after this date. This is because at this time, the Council told Ms X it would consult with schools to identify a suitable secondary school placement for Z. Ms X was entitled to expect the Council to do this in a timely manner, so she had no reason to appeal at the time.
8. We have no jurisdiction where a parent has appealed to the Tribunal to investigate events from the date the SEN appeal right arises until the appeal is completed. Any loss of education or fault during this period which is a consequence of the decision being appealed is out of jurisdiction, even if this means the injustice will not be remedied.

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9. When the Council issued a further final amended EHC Plan in February 2020, Ms X was unhappy with the school named by the Council and appealed to the Tribunal. Therefore, we cannot look at the events which took place after this date.
  10. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

## **Relevant law and guidance**

### **Children with special educational needs**

11. A child with special educational needs may have an EHC Plan. This sets out the child's needs, what arrangements should be made to meet them and where or how the child will be educated. The EHC Plan is set out in sections. We cannot make changes to the sections about special educational provision or name a different school. Only the SEND Tribunal can do this.

### **Annual reviews**

12. Councils should ensure an annual review of the child's EHC Plan is carried out within 12 months of the issue of the original plan or the completion of the last annual review. The purpose of the annual review is to consider whether the special educational support and educational placement is still appropriate. The annual review is not complete until the council has decided to either maintain the Plan, cease the Plan or amend the Plan.
13. Within four weeks of a review meeting, a council must notify the child's parent of its decision to maintain, amend or discontinue the EHC Plan. *(s20 (10) Special Educational Needs and Disability Regulations 2014)*
14. Where a council proposes to amend an EHC Plan, the law says it must send the child's parent or the young person a copy of the existing (non-amended) Plan and an accompanying notice providing details of the proposed amendments, including copies of any evidence to support the proposed changes. *(s22 (1) & (2) Special Educational Needs and Disability Regulations 2014)*
15. The Special Educational Needs and Disability Code (the Code) states if a council decides to amend the Plan, it should start the process of amendment "without delay". *(SEN Code para 9.176)*
16. The council must give the parent or young person at least 15 calendar days to comment on the proposed changes. *(s22 (2)(c) SEND Regulations 2014)*
17. Following comments from the child's parent or the young person, if the council decides to continue to make amendments, it must issue the amended EHC Plan as soon as practicable and within eight weeks of the date it sent the EHC Plan and proposed amendments to the parents. *(s22 (3) & (4) SEND Regulations 2014)*
18. If the council decides not to make the amendments, it must notify the child's parent or the young person, explaining why, within the same time limit.
19. Where a child is transferring from one phase of education to another, for example, from primary to secondary school, their EHC Plan must be reviewed and amended by 15 February in the calendar year of the transfer. *(s18 (1)(b) SEND Regulations 2014)*

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## How we considered this complaint

20. We produced this report after examining relevant files and documents and speaking to the complainant.
21. We considered the relevant legislation and statutory guidance.
22. We gave Ms X and the Council a confidential copy of this report and invited their comments. We took the comments they made into account before finalising this report.

## What we found

### What happened

23. Z is classed as a child with several physical and mental health conditions. He used to have a Statement of Special Educational Needs which the Council transferred to an EHC Plan in January 2018.
24. Z's 2018 EHC Plan detailed the style of teaching he needed to achieve the outcomes in his Plan.
25. On 27 June 2018, towards the end of Z's time in Year 5, his school held his annual review. The school sent the Council the outcome of the review on 23 July 2018. This stated the Council needed to amend Z's EHC Plan.
26. In September 2018, Z moved into Year 6, his last year at primary school.
27. On 23 October 2018, the Council issued Ms X with a notice stating it planned to amend Z's EHC Plan. The Council sent Ms X a copy of Z's existing Plan.
28. On 7 November 2018, Ms X sent the Council a request to consult with her preferred placement which was Secondary School 1, a mainstream school. Ms X's second preference, School 2, was an independent special school.
29. On 16 and 30 November 2018, the Council consulted with School 1 and another school.
30. The Council held a Panel meeting in January 2019 to consider Z's school placement. The Panel agreed to name School 1 in Z's EHC Plan. However, the Council did not act upon this.
31. On 20 February 2019, the Council sent Ms X a copy of Z's draft amended EHC Plan.
32. In June and July 2019, the Council consulted with School 2 (Ms X's second preferred choice) and another school.
33. On 15 July 2019, the Council issued Z's final EHC Plan. Section I of the Plan said the Council had allocated Z *"a further year at [his current primary school] or until a suitable secondary school can be found"*.
34. The Plan also said one of Z's main difficulties was social interaction and Sections E and F contained the type of support he needed to develop his social skills so he could interact and co-operate with his peers.
35. Ms X did not appeal the Plan. This is because she said the Council agreed it would consult with six secondary schools over the summer holidays to speed up the process. Ms X could then visit the schools once they reopened in September. In response to our enquiries, the Council said it decided not to do this. It did not explain to Ms X that it had changed its intention to consult.

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36. In September 2019, Z was due to start Year 7 at secondary school. However, because the Council had not found a place for him, Z remained at his primary school. Whilst he was at primary school, Z received one to one teaching each morning based on the Year 7 curriculum. In the afternoons, he joined his class for Year 6 lessons. Ms X told me this worked well for Z because the teachers at his primary school understood him and could avoid the triggers he found distressing.
37. In November 2019, Ms X told the Council she had been to School 3 and it seemed suitable for Z. School 3 was an independent special school. Ms X asked the Council to consult with the School. Ms X said the Council refused to do so until Z had been for a trial placement. She said the Council also told her it would not consult with the school unless she requested an annual review. Ms X said the Council then conceded and said it would consult with School 3. It did not do so.
38. In January 2020, the Council consulted with two further schools. It named one of those schools, School 4, on Z's Plan which it finalised in February 2020. Ms X appealed to the Tribunal the same month.
39. The Tribunal heard the case in June 2020. It directed the Council to name School 3 on Z's EHC Plan. Since being at School 3, Z has followed the full Year 8 curriculum.

#### **Ms X's complaint to the Council**

40. On 29 November 2019, while the above events were taking place, Ms X complained to the Council. The Council responded on 28 April 2020, around five months after Ms X had complained. The Council made the following findings.

#### **Delays in the annual review process**

41. The Council said it took eight weeks too long to inform Ms X that it would amend Z's EHC Plan when the process began in 2018. It said this was due in part to the school which took four weeks to send the Council the request to amend Z's Plan following the annual review meeting. It also said the summer term was the "*main season*" for annual reviews which added to the delay. The Council said "*in terms of the overall transition process to secondary school, [we] do not find this to be a material delay in the process*".
42. The Council partially upheld this complaint.

#### **Issuing of Z's final amended EHC Plan**

43. The Council informed Ms X that it "*is not subject to a statutory timescale from the date of a decision to amend an EHC Plan following a SAR [statutory annual review] until a draft amended version of the EHC Plan has been sent to the parent. The LA then has 8 weeks in which to finalise that draft EHC Plan...*".
44. The Council stated it had issued Z's EHC Plan seven weeks late and also after the 15 February deadline required when pupils were transferring between key phases in their education. The Council upheld Ms X's complaint.

#### **Consultations with schools**

45. The Council did not uphold this complaint. It said it consulted with Ms X's preferred school promptly. It said it had no obligation to consult with Ms X's second preferred school (School 2) because it was not a school which had been approved by the Secretary of State.
46. The Council said "*the sending of consultations could have been 'more timelier'*" but did not uphold Ms X's complaint.

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### **Delay in Z transferring to secondary school**

47. The Council said the Panel had approved a place for Z at School 1 in January 2019 but officers had failed to act on this. The Council upheld Ms X's complaint.

### **Poor communication with the Council**

48. The Council said Ms X had requested case officers contact her on 23 occasions between September 2018 and November 2019. The records show Ms X did not receive any substantive contacts from officers at all during this period. The Council upheld Ms X's complaint.
49. The investigating officer apologised to Ms X where they had found fault.
50. Ms X was unhappy with the Council's response and on 22 May 2020 she escalated her complaint to stage 2 of the complaint procedure. Ms X complained the Council had:
- taken too long to respond to her initial complaint; and
  - failed to find Z a suitable secondary school.
51. Ms X said this had left Z academically behind his peers and feeling isolated and lacking in self-worth because he thought he had been forgotten.
52. The Council responded on 30 June 2020, around six weeks later. It agreed it had taken too long to deal with Ms X's initial complaint and apologised for this.
53. The Council only partially upheld Ms X's complaint that it had failed to find Z a suitable secondary school. It said it acted in line with legislation when it named School 4 on Z's EHC Plan and it would shortly amend his Plan following the Tribunal's order to name School 3.
54. The Council acknowledged it had been a difficult time for Ms X and Z, made worse by COVID-19. However, it only partially accepted it was responsible for the delays in Z starting secondary school.
55. The Council said in future it would ensure the SEND Team communicated effectively with Ms X and it would issue Z's amended EHC Plan within the required timescales.
56. Ms X remained unhappy and complained to us.

## **Conclusion**

### **Delays in the annual review process and the issuing of a final amended EHC Plan**

57. Following an annual review meeting, a council must issue a decision letter within four weeks of holding the meeting. If amendments are required, the Code says councils must send the parent a copy of the proposed amendments "*without delay*". Councils then have a maximum of eight further weeks after sending the copy of the amendments to issue the final amended EHC Plan.
58. The school held Z's annual review meeting on 27 June 2018. The school informed the Council Z's Plan needed amending on 23 July 2018. The Council issued Ms X with the decision it would amend the Plan on 23 October 2018. This was nearly 17 weeks after the annual review was held. This substantial delay was 13 weeks longer than the law allows and was fault.

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59. A council must start the process of amending the EHC Plan without delay and then issue the final amended Plan within eight weeks of issuing the proposed amendments. The Council eventually issued Z's final amended EHC Plan on 15 July 2019, 56 weeks after the annual review process began in 2018. This was a significant delay and was fault.
60. The faults above are further compounded by the fact that the delays took place in a transition period for Z from primary to secondary school. The law says councils must review and issue the final amended EHC Plan by 15 February of the calendar year the child moves school. The Council issued Z's final amended Plan on 15 June 2019, 21 weeks after the deadline. This was also significant delay and was fault.
61. Ms X stated from the beginning that her preferred school was School 1. The Council consulted with the school and the Panel decided in January 2019 this should be the school named in Z's Plan. The Council failed to action this and this was fault.
62. In November 2019 Ms X asked the Council to consult with School 3. The Council did not have a duty to consult with this school, but it should have explained its reasons why it did not. It failed to do so and this was fault.

### **Injustice caused to Z**

63. We can look at fault and the injustice caused by that fault up to the date Ms X's appeal rights were triggered which was in February 2020 because Ms X went on to lodge an appeal with the Tribunal.
64. Because of the delays in the EHC Plan process and the Council's failure to follow the Panel's instructions to name School 1 on Z's Plan, Z had to remain at primary school for Year 7. During this time, the Council ensured he received one to one Year 7 tutoring each morning. This meant that when he was able to transfer to secondary school in September 2020, Z was able to go into Year 8 with his peers. The Council therefore took appropriate steps to ensure he received a suitable education whilst remaining at primary school.
65. However, Z's EHC Plan included an outcome to develop Z's social skills so he could interact and co-operate with his peers more successfully. Because Z was kept behind for a year, he had to socialise with children who were not his peers, but who were younger than him. As a result, he missed out on the opportunity to mix with children his own age.
66. Ms X has said the delays in going to secondary school have been traumatic for Z. He felt like he had been forgotten and this led to distress and upset. He also had to join his school year late, when the other children had already made friendship groups. This will have been additional and unnecessary stress on an already vulnerable child. And it will also have caused Ms X distress as Z's mother.
67. Furthermore, because of the delays we have identified, Ms X's right of appeal to the Tribunal was also delayed which caused her additional frustration. The fact she then used that right when she could, shows she experienced injustice because of the Council's delays.

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## Council complaint responses

68. In its complaint responses to Ms X, although the Council admitted to some errors, it failed to identify the full extent of its fault. It only partially upheld Ms X's complaint that it delayed in the annual review process, when the delays were significant. It should have upheld her complaint in full. Its failure to do so was fault.
69. The Council also informed Ms X it delayed by "7 weeks" in issuing Z's EHC Plan. This was incorrect. The whole process from holding the annual review to issuing Z's Plan took over a year. The Council should have acknowledged the full extent of the delays. Instead, in its stage 1 response to Ms X, the Council said it "*is not subject to a statutory timescale from the date of a decision to amend an EHC Plan following a SAR [statutory annual review] until a draft amended version of the EHC Plan has been sent to the parent. The LA then has 8 weeks in which to finalise that draft EHC Plan...*".
70. This is not in line with the legislation. The regulations state councils must issue a decision letter to amend within four weeks of the annual review. It should then issue the amendment notice and draft Plan "*without delay*" and the final Plan within eight weeks of the amendment notice. The Council took 17 weeks to issue the notice to amend Z's Plan and did not finalise Z's Plan until 56 weeks after the annual review. At no stage did it act "*without delay*" and where there were specific statutory guidelines it failed to meet them. The Council should have acknowledged this to Ms X and apologised. The Council should amend its procedures to ensure they are in line with legislation.
71. The Council also stated its faults only partially led to the delays in Z transferring to secondary school. Again, we disagree. The Council's failure to name School 1 in January 2019 on Z's EHC Plan in line with the Panel's instructions was a significant fault and caused Z to remain at primary school.
72. The Council took around five months to respond to Ms X's stage 1 complaint. This was significantly longer than we would expect and was fault. The Council's response at stage 2 was within six weeks and we do not find fault with that timescale.
73. Because the Council's complaint response was delayed at stage 1 and failed to acknowledge in full where the Council had acted with fault, Ms X was left feeling unnecessarily frustrated. She was also caused additional time and trouble because she had to complain to us.

## Agreed actions

74. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
75. To remedy the injustice identified in this report, within three months of the date of this report the Council has agreed to:
- apologise to Ms X for the faults we have identified; and
  - pay Ms X on behalf of herself and Z, £1,000 to acknowledge the distress Z experienced when he was unable to transfer to secondary school at the same time as his peers for a whole school year and for the unnecessary frustration,

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distress and time and trouble Ms X experienced because of the Council's faults.

76. Within six months of the date of this report the Council has agreed to review its processes to ensure it is carrying out annual reviews, issuing decision notices and finalising amended Education, Health and Care Plans in line with the statutory guidelines.
77. The Council has agreed to provide us with evidence it has carried out these recommendations.

## **Decision**

78. The Council was at fault when it delayed in carrying out Z's annual review, issuing his final amended Education, Health and Care Plan and consulting with secondary schools. As a result, Z missed out on special educational provision and had to remain in primary school for an additional year. The Council has agreed to take the action identified in paragraphs 74 to 76 to remedy that injustice and prevent a similar recurrence in the future.

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**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**17 June 2021**

**Report of the Monitoring Officer**

**Report of the Local Government & Social Care Ombudsman -  
Investigation into Complaint No 18/000/932 against Derbyshire County  
Council  
(Children's Services)**

**1. Divisions Affected**

1.1 County wide.

**2. Key Decision**

2.1 This is not a key decision.

**3. Purpose**

3.1 To inform Cabinet of a recent case investigated by the Local Government and Social Care Ombudsman (LGSCO) who has made a finding of fault by the Council causing injustice to the complainant.

**4. Information and Analysis**

4.1 Members are aware that if an individual is dissatisfied with the service provided by the Council he/she may complain under the Council's Corporate Complaints Procedure. If a complainant remains dissatisfied they are able to refer the complaint to the Local Government and Social Care Ombudsman. If the LGSCO decides to investigate a complaint he will determine whether, in his opinion, the Council has been guilty of

“maladministration” and if so whether the complainant has sustained “injustice” in consequence.

- 4.2 Section 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to her that there has been maladministration in the exercise of its functions. The duty does not arise in respect of a finding of maladministration by the LGSCO unless the LGSCO has conducted an investigation (S. 5A(4)). The Monitoring Officer is obliged to and has consulted the Head of Paid Service and Chief Financial Officer in the preparation of this section 5A report and provided a copy to each Member of the Council.
- 4.3 As soon as practicable after the Executive has considered the Monitoring Officer’s report it must prepare a report which specifies:-
- (a) What action (if any) the Executive has taken in response to the Monitoring Officer’s report,
  - (b) What action (if any) the Executive proposes to take in response to the report, and
  - (c) The reasons for taking the action or for taking no action.

#### Background

- 4.4 This report relates to a complaint in relation to Z, a child with several physical and mental health conditions. He was previously supported by a Statement of Special Educational Needs which Derbyshire County Council transferred to an Education Health and Care Plan (EHCP) in January 2018. The EHCP is a legal document which outlines a young person’s needs, support and educational placement.
- 4.5 On 27 June 2018, towards the end of Z’s time in Year 5, his school held an annual review meeting, the minutes of which were sent on to the special educational needs and disabilities (SEND) assessment team on 23 July 2018. An annual review is a process which needs to take place each year in order to determine whether any changes are needed to a young person’s package of support. The annual review for Z stated the Council needed to amend Z’s EHCP to reflect that his increased anxiety required a higher ratio of adult support with therapeutic provision included and an enhanced transition package at the end of key stage 2 , In September 2018, Z moved into Year 6, his last year at primary school.
- 4.6 On 23 October 2018, the Council issued Z’s parents with a notice stating it planned to amend Z’s EHCP and on 7 November, Ms X sent the Council a request to consult with her preferred placement which was

a mainstream secondary school called School 1. Ms X's second preference, School 2, was an independent special school.

- 4.7 The Council consulted with School 1 and another school and Derbyshire County Council agreed to name School 1 as the school of choice, but unfortunately this was not actioned. Over June and July the Council consulted with School 2 (Ms X's second preferred choice) and another school. However, on 15 July 2019, the Council issued Z's final EHCP allocated Z *"a further year at [his current primary school] or until a suitable secondary school can be found"*.
- 4.8 Ms X did not appeal the EHCP because she said officers agreed to consult with six secondary schools over the summer holidays. Ms X could then visit the schools once they reopened in September. However, the officer leading on the case did not action this and did not explain to Ms X that there had been a change in the intention to consult.
- 4.9 In September 2019, Z was due to start Year 7 at secondary school. As the Council had not named a secondary school place for him, Z remained at his primary school. Whilst he was at primary school, Z received 1:1 teaching each morning based on the Year 7 curriculum. In the afternoons, he joined his class for Year 6 lessons. Ms X felt this worked well for Z because the teachers at his primary school understood him and could avoid the triggers which he found distressing.
- 4.10 In November 2019, Ms X told the Council she had been to School 3 and it seemed suitable for Z. School 3 was an independent special school. Unfortunately, the council officer leading the case was too slow in agreeing to consult with this school and eventually failed to do so.
- 4.11 In January 2020, officers consulted with two further schools. It named one of those schools, school 4, on Z's Plan which it finalised in February 2020. Ms X took up her rights to appeal to a tribunal and the case was heard the case in June 2020. The tribunal directed the Council to name School 3 on Z's EHCP.

#### The initial complaint to the Council

- 4.12 On 29 November 2019, while the above events were taking place, Ms X complained to Derbyshire County Council and on 28 April 2020 a stage 1 response was sent which upheld the majority of complaints and offered an unreserved apology. Ms X was unhappy with the Council's initial response and she escalated her complaint to Stage 2/final response of the Council complaint procedure on 22 May 2020. The complaints and Council responses are below:

- a) Delays in the annual review process and the issuing of the final amended EHCP - The Council partially upheld the complaint as the plan was late in being issued.
- b) Failure to consult with schools - The Council did not uphold this part of the complaint as Ms X's preferred school was consulted with in a timely manner.
- c) Delay in Z transferring to secondary school - The Council upheld this part of the complaint as officers did not act on the agreed transfer to secondary school.
- d) Poor communication with the Council- The Council upheld this part of the complaint at Stage 1 but Ms X felt the response had taken too long. Ms X said this had left Z academically behind his peers and feeling isolated and lacking in self-worth because he thought he had been forgotten. The Council responded within timescale on 30 June 2020 through a stage 2 investigation and agreed it had taken too long to address the initial complaint for which it apologised.
- e) Failed to find Z a suitable secondary school - The Council only partially upheld this part of the complaint. The Council said it acted in line with legislation when it named School 4 on Z's EHCP and would shortly amend his plan in accordance with the tribunal's order to name School 3. The Council acknowledged it had been a difficult time for Ms X and Z, made worse by COVID-19. However, it only partially accepted it was responsible for the delays in Z starting secondary school. The Council said in future it would ensure that SEND officers communicated effectively with Ms X and it would issue Z's amended EHCP within the required timescales.

#### The complaint to the LGSCO

- 4.13 Ms X remained unhappy with the Council's response to her complaint and complained to the LGSCO who agreed to investigate. As a result of its investigation, the LGSCO found the Council was at fault when it delayed in carrying out Z's annual review, issuing his final amended Education, Health and Care Plan and consulting with secondary schools. As a result, Z missed out on special educational provision and had to remain in primary school for an additional year. A copy of the LGSCO report setting out the decision is attached at Appendix 2 for information. In summary the actions the Council has agreed with the LGSCO are:

- a) The Executive to consider the report and confirm within three months the action it has taken or proposes to take.
- b) To remedy the injustice identified in the report, within three months of the date of the report to:
  - apologise to Ms X for the faults we have identified; and
  - pay Ms X on behalf of herself and Z, £1,000 to acknowledge the distress Z experienced when he was unable to transfer to secondary school at the same time as his peers for a whole school year and for the unnecessary frustration, distress and time and trouble Ms X experienced because of the Council's faults.
- c) Within six months of the date of the report review its processes to ensure it is carrying out annual reviews, issuing decision notices and finalising amended Education, Health and Care Plans in line with the statutory guidelines.
- d) To provide the LGSCO with evidence it has carried out these recommendations.

#### Response to the LGSCO's report

- 4.14 The Council has accepted the LGSCO's findings and agreed to the recommendations, which has been welcomed by the LGSCO. Following receipt of the report, the Council has already apologised fully to Ms X for the faults identified and paid Ms X on behalf of herself and Z, £1,000.
- 4.15 In accordance with the LGSCO requirement, the Council will place two public notices announcements in two local newspapers/websites within two weeks of the LGSCO publishing the report. It will also made copies of the report available free of charge at one or more of the Council Offices.
- 4.16 This report fulfils the requirement to arrange for the LGSCO's report to considered by the "executive" and following this meeting the LGSCO will be informed that this has been done.
- 4.17 The LGSCO requires that within six months of the date of the final report the Council should review its processes to ensure it is carrying out annual reviews, issuing decision notices and finalising amended EHCPs in line with the statutory guidelines. The Council has begun a review into it processes for the completion of annual reviews to ensure practice is as efficient as possible. Annual reviews are conducted by the provisions delivering an EHCP and the council's role is to ensure any amendments required are made in a timely manner.
- 4.18 Work already begun has identified elements of the annual review process that will enable shorter timeframes which includes termly

prompts to nurseries, schools and colleges about which annual reviews are due, date checking procedures and chasing up of returns. As part of this, the SEND assessment team has attended recent regional training to maintain knowledge of up to date practice which can be shared through county training. The training for Derbyshire's provider leaders in inclusion is currently being reviewed and will include training on best practice for annual reviews. The SEND assessment team also have a programme of legal training in place to ensure their work is fully compliant with the law. The Council will provide evidence to the LGSCO by the required date to confirm the actions have been taken in accordance with the agreed remedy.

- 4.19 Importantly, the SEND assessment service has also considered the final aspect of the LGSCO's recommendations regarding the response to Ms X's complaint. During the last year, the number of complaints has fallen and all complaints are taken seriously. However, in this instance, it is clear that Ms X's complaint should have been fully upheld rather than two aspects being partially upheld.

Further actions already taken to address the matters arising within this historical complaint.

- 4.20 The Director of Legal and Democratic Services had noticed in 2019 that there was a theme in complaints to the LGSCO relating to Children's Services matters and SEN. This was also the situation nationally. The Council received a LGSCO report relating to another SEN matter in 2019 and this was reported to the Governance, Ethics and Standards Committee on 3 October 2019.
- 4.21 Following the Governance Ethics and Standards Committee, the Director of Legal and Democratic Services contacted Children's Services Quality & Assurance Team to discuss the number of Children's Services SEN LGSCO complaints and asked whether Legal Services could support Children's Services to address the underlying issues and to reduce the likelihood of a further LGSCO report on a Children's Services SEN matter. There were a number of meetings with Legal and Children's Services and at that time a new Assistant Director of Children's Services with responsibility for SEN had also been appointed. Children's Services were confident that since the last LGSCO report in relation to SEN they were making good progress on complaints generally and SEN matters.
- 4.22 The SEN assessment team is responsible for delivery of the Council's statutory duties with regard to the assessment of need, writing and reviewing of EHCPs. Significant change has taken place within this

team to address the matters that have arisen in the history of this complaint. These are detailed below.

(a) Performance in the team

- 4.23 During the last year, there has been a significant change of leadership and officers across the department of Schools and Learning and the SEND assessment team. A new induction process for recently appointed senior officers within the SEND assessment team is now in place which ensures they are aware of expectations and team performance. This is supported by regular supervision of senior officers by the Head of Service aligned to the performance data.
- 4.24 A performance culture has been introduced into the SEND assessment team which ensures that officers track their performance to meet statutory deadlines. This has resulted in significantly improved timeliness of new EHCP assessments being completed within their statutory timescales of twenty weeks. This has increased from 38% in 2018 and 44% in 2019 to 71% in 2020 (above national average). There has also been a rise in timeliness of annual review completion rates from 11.6% in August 2020 to 49.8% in December 2020.
- 4.25 Since November 2019, officers have looked at the emerging themes from complaints and actioned a change of practice. There are now regular weekly meetings between the SEND head of service and complaints' manager to ensure communication and timely response to complainants and this has resulted in a significant reduction in lower level complaints and timely response now in place.

During 2019-2020, 103 complaints were received with only 26 responded to in time.

Month	Number received	Response within timeframe	
April 2019	9	2	22%
May 2019	15	4	27%
June 2019	13	3	23%
July 2019	16	3	19%
August 2019	8	3	37%
Sept 2019	2	2	100%
October 2019	4	2	50%
November 2019	13	2	15%
December 2019	4	0	0%
January 2020	7	2	28%
February 2020	5	1	20%
March 2020	7	2	28%

<b>Total</b>	<b>103</b>	<b>26</b>	<b>25%</b>
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However, there was a significant improvement in performance in 2020-21 with 55 out of 72 complaints responded to in time. The number of complaints received and responses by month April 2020 – March 2021 are set out below:

Month	Number received	Response within timeframe	
April 2020	1	1	100%
May 2020	7	6	86%
June 2020	6	4	67%
July 2020	12	5	42%
August 2020	6	4	67%
Sept 2020	5	4	80%
October 2020	7	6	86%
November 2020	3	3	100%
December 2020	6	5	83%
January 2021	5	5	100%
February 2021	6	5	83%
March 2021	8	7	87.5%
<b>Total</b>	<b>72</b>	<b>55</b>	<b>76%</b>

- 4.26 There are now also fortnightly meetings between the SEND head of service and SEND quality assurance manager to address any matters arising from EHCP quality.
- 4.27 It is important that when considering this LGSCO report, Members are mindful that this and many of the recent complaints to the LGSCO are legacy complaints that originated in practice from previous years, prior to the above changes. A strategic working group from SEND and the complaints team is now in place to monitor and address LGSCO reports specifically, ensure actions are delivered and to also monitor refusals to investigate.
- 4.28 It must also be noted that sometimes agreement of EHCPs may be late for a variety of reasons including parents' illness and therefore the team may be unable to agree a plan. However, performance has improved in this area and plans where there are significant delays have reduced from approximately 38 in May 2020 to 20 in July 2020, 7 in October 2020 and 2 in January 2021.

(b) Communication

- 4.29 In addition to the focus on a performance culture, there have been a number of developments internally with Learning Access and Inclusion Services and across departments that have significantly improved

internal communications to ensure that delays are picked up for vulnerable cohorts. Those involving the SEND assessment team are listed below:

- SEND attendance secured at team monitoring meetings (eg Education Planning Group which addresses children not in school)
- SEND and Elective Home Education meetings in place
- SEND and Social Care meetings in place
- SEND and Virtual School meetings in place.

4.30 There have also been increased and improved communications with parents over the year which have been recognised as making significant difference by the parents themselves and the regional adviser. These include:

- Regular virtual afternoon and evening meetings with Derbyshire Parents Carer Voice, Derbyshire Information and Advice Support Service, Schools and Learning Director, Assistant Director for Learning, Access and Inclusion, SEND head of service and co-production theme leads from Educational Psychology
- Weekly/fortnightly meetings with Derbyshire Parent Carer Voice, SEND head of service and senior officers
- Work has begun on a parents drop in with Derbyshire Parent Carer Voice to provide way to raise immediate concerns

#### Further recommendations of the Monitoring Officer

4.31 The Council has already apologised fully to Ms X for the faults identified and paid Ms X on behalf of herself and Z, £1,000. In respect of the action to review processes to ensure the Council is carrying out annual reviews, issuing decision notices and finalising amended EHCPs in line with the statutory guidelines, it is recommended that Cabinet consider requiring a progress report to the relevant Cabinet member in August and November.

4.32 In view of the fact that specific changes had already been made in areas identified prior to receipt of the LGSCO's report and the Council has accepted the LGSCO's recommendations, no further activity is recommended.

## **5. Alternative Options Considered**

- 5.1 In view of the fact that the LGSCO has categorised the complaint as “Upheld: maladministration and injustice”, the statutory process for reporting the decision must be followed.
- 5.2 The Executive could decide to take no action other than to implement the recommendations made by the LGSCO. This could however result in the Council receiving further complaints and there being further instances of maladministration in the exercise of this function. The Executive could also decide to take a different course of action to that recommended in the report, however it is considered that the actions proposed are appropriate based on the information considered.

## **6. Implications**

- 6.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **7. Background Papers**

- 7.1 None Identified

## **8. Appendices**

- 8.1 Appendix 1- Implications.
- 8.2 Appendix 2 – Report of the Local Government & Social Care Ombudsman.

## **9. Recommendations**

That Cabinet:

- a) notes the findings of the Local Government and Social Care Ombudsman set out in the report at Appendix 2 and the actions which have been taken by the Council in response to that report and more generally to prevent further escalations of complaints;
- b) confirms whether it is satisfied with the steps taken to address the findings and whether the additional action set out in paragraph 4.31 should be taken; and
- c) notes that a copy of this report has been circulated to all members of the Council.

## **10. Reasons for Recommendations**

- 10.1 To comply with the provisions of the Local Government and Housing Act 1989.
- 10.2 To ensure that there is a robust plan in place to put right the issues identified by the LGSCO and avoid any complaints or instances of maladministration in the exercise of this function in the future.

**11. Is it necessary to waive the call in period?**

11.1 No

Report Author: Helen Barrington

Contact details: [helen.barrington@derbyshire.gov.uk](mailto:helen.barrington@derbyshire.gov.uk)

**This report has been approved by the following officers:**

<p><b>On behalf of:</b></p> <p>Director of Legal Services and Monitoring Officer          Director of Finance and ICT          Managing Executive Director</p>	<p>Drafted by the Monitoring Officer          ) Consulted in the preparation of the          ) report as Head of Paid Service and          Chief Financial Officer</p>
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## Implications

### **Financial**

- 1.1 Payments have already been made to the complainant in accordance with the recommendation of the LGSCO.

### **Legal**

- 2.1 The Local Government and Social Care Ombudsman's powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. The LGSCO may investigate complaints of maladministration causing injustice.
- 2.2 The LGSCO cannot question whether a Council's decisions are right or wrong simply because the complainant disagrees with them. He must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3)).
- 2.3 Section 31 of the Local Government Act 1974 requires a report to be submitted to "the authority" when a report on maladministration is received from the Local Government and Social Care Ombudsman. The specific requirement is that the report to "the authority" is made to the "executive" i.e. Cabinet (s.25(4ZA) Local Government Act 1974).
- 2.4 The Director of Legal and Democratic Services' report is made to the "executive" under the Director's role of Monitoring Officer (s.5A Local Government and Housing Act 1989). In the role of Monitoring Officer the Director of Legal and Democratic Services is also obliged to consult with the Head of Paid Service and S151 Officer when preparing the report. The report must be sent to each member of the Council and Cabinet must meet to consider the report within 21 days of the report being sent to the Executive.
- 2.5 The Council is required to give public notice by advertisements in two local newspapers stating that copies of the LGSCO's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974). In view of Covid restrictions the Council intends to go further than this and the public notices will state that the Council will send a copy of the report by post or email and it will also be available on the Council's website and the LGSCO's website.

- 2.6 The LGSCO's recommendations are not legally enforceable although it is extremely unusual for a Council not to accept them. The Council must inform the LGSCO of the actions it proposes to take within 3 months of the date on which the Council received the report. If the Council fail to do this or the LGSCO is not satisfied with the action proposed by the Council then the LGSCO can issue a further report.
- 2.7 The Council's Constitution provides that one of the roles and function of the Governance , Ethics and Standards Committee is '*11. To receive regular reports on the of the Corporate Complaints process, Local Government Ombudsman referrals and to recommend revisions to related policies and procedures as appropriate*'. A report will therefore also be prepared for the Committee.

### **Human Resources**

- 3.1 None directly arising from this report.

### **Information Technology**

- 4.1 None directly arising from this report.

### **Equalities Impact**

- 5.1 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.

### **Corporate objectives and priorities for change**

- 6.1 None directly arising from this report.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 None directly arising from this report.

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**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**1 JULY 2021**

**Report of the Director of Legal and Democratic Services**

**REVIEW OF STANDARDS REGIME**

**1. Purpose**

- 1.1 To seek approval to set up a working group to review various aspects of the current standards regime.

**2. Information and Analysis**

- 2.1 The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The Act repealed certain provisions of the Local Government Act 2000, which provided the basis for the previous statutory standards regime, abolished standards for England and required the Council to introduce a new regime.
- 2.2 The current Derbyshire County Council standards regime is underpinned by:
- A Code of Conduct
  - Arrangements for dealing with complaints
  - 3 Independent Person positions
- 2.3 The regime approved in 2012 has continued unchanged and it is now prudent to review it to confirm that it remains fit for purpose.

2.4 On 19 January 2021, this Committee was informed of a new Model Code of Conduct published by the LGA in response to the Committee on Standards in Public Life report on Local Government Ethical Standards. The Committee agreed to establish a working group to review the current Code in accordance with the best practice recommendations of the CSPL and to consider whether the new model Code should be adopted by the Council.

2.5 It is proposed that an additional working group is set up to review the following aspects of the current regime and report back to Standards Committee.

- Standards Committee/Hearing Sub-Committee
- Arrangements for dealing with complaints
- Independent Persons

It is also proposed that the existing working group is asked to review the position regarding dispensations

2.6 It is therefore requested that the Committee identifies the composition of both working groups with a view to meetings being arranged to commence the reviews as soon as possible.

2.7 Officers will provide a briefing note and information pack in advance of the first working group meeting. The outcome of the reviews conducted by the working groups will be reported to a future Governance, Ethics and Standards Committee for consideration and approval.

### **3. Alternative Options Considered**

3.1 Not to review the current Derbyshire County Council standards regime however this is not recommended as it does not give an assurance that the regime is fit for purpose.

### **4. Implications**

4.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **5. Consultation**

5.1 Not applicable.

### **6. Background Papers**

6.1 None identified.

## 7. Appendices

7.1 Appendix 1 – Implications.

## 8. Recommendations

That Committee:

- a) agrees the composition of the working group to review the Code of Conduct identified at the previous meeting of this Committee and agrees to include a review of the position relating dispensations within its remit; and
- b)
- c) agrees to set up an additional working group to review various aspects of the current standards regime as set out in the report and approves the composition of the group.

## 9. Reasons for Recommendation(s)

9.1 To ensure that the Derbyshire County Council standards regime is reviewed and is fit for purpose.

**Report Author:** Helen Barrington    **Contact details:** helen.barrington@derbyshire.gov.uk

**This report has been approved by the following officers:**

<b>On behalf of:</b> Director of Legal Services and Monitoring Officer Director of Finance and ICT Managing Executive Director Executive Director(s)	Drafted by the Director
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**Implications**

**Financial**

1.1 None directly arising out of this report.

**Legal**

2.1 The Localism Act 2011 sets out the statutory framework for ethical standards and any recommendations from the working groups must comply with those statutory requirements.

**Human Resources**

3.1 None directly arising out of this report.

**Information Technology**

4.1 None directly arising out of this report.

**Equalities Impact**

5.1 None directly arising out of this report.

**Corporate objectives and priorities for change**

6.1 None directly arising out of this report.

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None directly arising out of this report.