

**DERBYSHIRE COUNTY COUNCIL**

**Governance, Ethics and Standards Committee**

**3 October 2019**

**Report of the Executive Director – Children's Services**

**Report of the Local Government Ombudsman on an Investigation into  
Complaint No 18 000 932 against Derbyshire County Council**

**1. Purpose of the Report**

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. Background**

J is the eldest son of Ms B and Mr S. J has a younger sibling, J has experienced significant difficulties from an early age with his behaviour and communication with others. J was diagnosed with autism and received support via a statement of special educational needs to transition to secondary school.

Whilst at secondary school, J's behaviour continued to deteriorate which also impacted on his attendance. In the beginning the school and Ms B agreed J should go home for lunch and be brought back for the afternoon sessions as they were unable to manage his behaviour over lunch times. Over time this increased and by year 8 onwards his overall attendance was very low. J's mum reported that he was very vulnerable to outside influences in the community at that time and his behaviour at home also worsened.

J received a significant level of support from the local multi-agency team who worked with both J and Ms B to improve his school attendance. A social care initial assessment was completed in December 2013 and core assessment in February 2014 at which time both J and his brother L were placed on a child protection plan. They remained on a child protection plan until October 2014 when professionals felt it was no longer necessary.

J has also been supported by medical professionals for a number of years during which time he has been prescribed a number of different medications to help manage his behaviour. This has resulted in long periods of instability which has impacted significantly on his ability to cope with day to day life.

More recently J has been diagnosed with schizophrenia and he has received support from adult services.

### **3. The Complaint**

The complainant first complained to the LGSCO that:

1. The Council failed to make appropriate education provision for J and
2. The Council failed to provide a special school placement as requested.

Ms B first contacted the Local Government and Social Care Ombudsman in 2015 at which time it was declared a premature referral and the Council was asked to consider the complaint under the relevant complaints procedure.

There were a number of delays including a poor quality initial investigation, followed by reallocation and unexpected staff absence which resulted in all stages of the complaint process not being concluded until April 2018. The complaint was upheld on both counts and a number of recommendations were made.

The LGSCO notified the Council of its intention to investigate on 9<sup>th</sup> May 2018, requesting a copy of the report and adjudication letter sent to Ms B. As a result of its investigation, the LGSCO notified the Council of its intention to issue a public report on this matter a copy of which is attached for information.

### **4. Findings**

The LGSCO found the following fault

- While there were attempts to encourage J to attend school he attended little and there was no structured alternative provision. There is no evidence that reviews took place after Year 10.
- The annual reviews of the statement were ineffective. Once the Council considered the report from the annual reviews it should have asked more questions about what was being delivered. This would have revealed it was not providing what the Statement required and what J was entitled to receive.
- There was significant delay in considering the complaint.

The LGSCO also found the following fault causing injustice:

- The failure to provide J's SEN support, particularly speech and language therapy (SALT), represents fault that caused potentially significant impact to J.
- Between 2011 and 2014 J's attendance deteriorated significantly. Whilst not all issues he faced were due to education, and whilst at times it was unlikely he could have engaged with education, as the

Council has identified, he needed the support set out in his statement and the LGSCO was satisfied J was caused disadvantage

- Ms B and Mr S were left with a degree of distress and uncertainty about how much of a difference SALT provision may have helped J during his school years.
- The LGSCO welcomes the apology the Council has provided to Ms B and the actions the Council agreed to take to improve its processes and procedures following this complaint. However, as the impact is significant the LGSCO considered a financial remedy appropriate to recognise the damage to J's education.

## **5. Recommendations/actions:**

The fault identified meant that J missed out on education and SEN provision for the majority of his secondary school years. The LGSCO welcomed that the Council accepted the findings and agreed to the following recommendations:

- The Council will make a payment of £22,500 to J to reflect the impact of the missed provision. In part, this could be used to fund a shed that would help J manage his mental health, with the remainder placed in trust for J. This recommendation has now been actioned and the agreed payment made to J.
- The Council will recognise the impact on Ms B from the lack of provision for J and the distress and uncertainty about how much the provision may have helped J over an extended period. To reflect this the Council should pay Ms B £1000. This recommendation has now been actioned and the agreed payment made to Ms B.

In addition to the above recommendations the following actions have also been taken:

- The Council has placed two public notice announcements in two local newspapers/websites within two weeks of the LGSCO publishing the report. It has also made copies of the report available free of charge at one or more of the Council Offices. This is a required action in relation to a public report issued by the LGSCO and has been completed by Legal services.
- The Council is also required to arrange for the report to be placed before the Council's, Governance, Ethics and Standards Committee and inform the LGSCO when this has been done. This report fulfils this required action in relation to a public report issued by the LGSCO.
- The Council will provide evidence to confirm the required actions have been taken in accordance with the agreed remedy.
- The learning from this investigation is to be shared with both Schools and SEND services to ensure such a situation is mitigated against for the future. This is being taken forward by the Service Director, Schools & Learning and the Head of Service for SEND

- Management oversight of attendance at school for children and young people with SEND has also been added to the Children's Services risk register.

## **6. Legal and Human Rights Considerations**

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 Ombudsman may investigate complaints of maladministration causing injustice.

The Ombudsman cannot question whether a council's decisions are right or wrong simply because the complainant disagrees with them. She must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3)).

## **7. Financial Considerations**

Payments have been made to both J and Ms B in line with the remedy outlined.

## **8. Other Considerations**

In preparing this report the relevance of the following factors have also been considered: prevention of crime and disorder, equality and diversity, environmental, health, property and transport considerations.

## **9. Officer Recommendation**

That the Governance, Ethics and Standards Committee notes the findings of the Local Government and Social Care Ombudsman and the action which has been taken by the Council in response to the Ombudsman's report.

**Jane Parfremment**  
**Executive Director – Children's Services**