

| <b>Council</b>      |   |                 |                  |
|---------------------|---|-----------------|------------------|
| <b>Report Title</b> | Local Government Ombudsman – CWCN Service & Complaints Service  |                 |                  |
| <b>Ward</b>         | All   | <b>Item No.</b> |                  |
| <b>Contributors</b> | Executive Director for Children’s Services<br>Director of Children’s Social Care<br>Head of Targeted Services and Joint Commissioning |                 |                  |
| <b>Class</b>        | Open  | <b>Date</b>     | 22 November 2017 |

**1 Purpose**

1.1 To bring to the Council’s attention the outcome of a Local Government Ombudsman (LGO) investigation following complaints which were upheld from a Lewisham resident regarding services provided by the Children with Complex Needs Service

**2. Executive Summary**

2.1 The resident complained that when the Children with Complex Needs Service undertook an assessment of her two sons’ needs which was not properly completed, and did not form a proper foundation for the decisions to reduce the care packages available to her children subsequently made at the Care Package Panel.

2.2 There was a delay in informing the resident of the Panel’s decision and she was not initially provided with a copy of the relevant assessment. The resident was unhappy with the changes made to the care packages for both her sons and made a complaint. This was processed via the Corporate Complaints structure rather than the Statutory Children’s Complaints Procedure. The complaint did not progress to resolution leading to the resident approaching the Local Government Ombudsman, at which point officers identified this procedural error. Despite being accepted by the Children’s Complaints Service the complaint suffered further delay and was not progressed through the various stages in a timely way, leading to the resident approaching the Local Government Ombudsman again.

2.3 There followed a protracted period where the LGO asked for updating information and gave expectations for when that information should be provided, only for there to be repeated delays in the Council’s response, or on occasions for there to be no response at all. In April 2017 a proper Stage 2 investigation was initiated and on its completion the resident requested that, rather than proceed to Stage 3 of the Complaints Procedure the Ombudsman should make a finding due to her loss of confidence in the Council, which was accepted.

2.4 The LGO Report attached at Appendix A gives the Ombudsman’s finding of fault leading to injustice in several areas covered by the complaint.

### **3. Recommendation**

3.1 It is recommended that Council note the contents of the report.

### **4. Policy & Legislative context**

4.1 Lewisham's Sustainable Communities Strategy 2008 – 2020 includes the priority: "Ambitious and Achieving", where people are inspired and supported to achieve their potential. The strategy sets out commitments to support all our young people by removing barriers to learning, and more broadly to tackle inequality and narrow the gaps in outcomes for our citizens, including children and young people with complex needs.

4.2 Lewisham's Children and Young People's Plan 2015 – 2018 sets out the vision of Lewisham's Children and Young People's Partnership for improving outcomes for all children. It articulates the need to improve outcomes for children with Special Educational Needs and Disabilities by ensuring that their needs are identified and met

4.3 Under the Children and Families Act 2014, the Special Educational Needs and Disabilities (SEND) reforms emphasise the importance of improving the life chances and well-being for young people with complex needs.

### **5. Background & detail of the findings**

5.1 The LGO is the final stage for complaints about councils and some other organisations providing local public services. Once the LGO conclude their investigation, if they find there has been fault or injustice, they are required under Section 30(3) of the Local Government Act 1974 to provide a report without naming or identifying the complainant or other individuals

5.2 The LGO are also able to require us to take certain actions, in this case the Council have been required to make a public notice in more than one newspaper within two weeks of receiving their report, and to make the report available at one or more of the Council's offices for three weeks.

5.3 The resident complained that the Children with Complex Needs Service started an assessment of her sons' needs in January 2016 but failed to complete it fully. The resident further complained the social worker failed to keep her updated about progress with the assessment and failed to tell her its outcome for two months. When the social worker eventually told her of the decision, the complainant did not receive a copy of the assessment or the resulting care plans. Nor was she told when changes to the care package would start. The complainant was unhappy with the changes to her sons' care plans and the way the Council subsequently dealt with her complaint. The LGO found fault with the Council's failure to consider other respite options for one child such as out of borough placements or foster carers. The Council has confirmed it no longer operates a waiting list for short break provision.

- 5.4 Fault was found because the resident was not fully involved in the assessment undertaken and was not provided with a copy on its completion. The assessment took longer than what was reasonable to expect and the LGO found fault with this extended period of assessment. Additionally the assessment did not give reasons for the changes made to the existing care packages agreed for both children.
- 5.5 The social worker made a verbal presentation to the Care Package Panel but the basis for this verbal presentation was not retained. The LGO found that the presentation did not represent the views of the resident because these had not been gained. The Care Package Panel failed to give reasons for its decision to reduce the children's care packages and did not keep a proper record of the information on which their decisions were based. The continued failure to supply the resident with a copy of the assessment, despite this being a recommendation made by the Stage 2 Complaint process, and the failure to review the assessment after six months were also highlighted. The LGO found fault with all of these areas.
- 5.6 The Council has accepted that in progressing the complaint through the Corporate Complaints procedure rather than the statutory Children's Complaints procedure it was at fault. The LGO found fault with the Council's slow response to the challenge made by it in relation to this procedural error.
- 5.7 The resident was not kept updated about what was happening with her complaint and statutory timescales were missed when dealing with the complaint at Stage 2. The LGO's own enquiries about the complaint were not adequately responded to. All of these areas have been classed as fault.
- 5.8 The LGO found Injustice was caused by the delayed completion of the assessment and the failure to provide the resident with a copy, thus preventing her from being able to provide her views prior to the decision-making panel. The continued failure to provide a copy of the assessment, to give reasons for the changes made to the care packages for her children and the lack of timeliness in progressing her complaint led to a loss of confidence in the Council.
- 5.9 This report sets out the details of the case and the LGO's findings.

## **6. Details of the case**

- 6.1 Mrs B has two children, C aged 11 years and D aged 10 years. Both are autistic. C has significant difficulties with speech, language, social interaction, and play skills. He also has ADHD. D has learning difficulties and problems with social interaction and social communication. Both have been supported via Child In Need plans since 2012.
- 6.2 In early 2015, the Council wrote to Mrs B to confirm the agreed care package for D, i.e. 7 hours a week short break direct payments; and 24 nights per year respite accommodation when he reached the eligible age. He was placed on a

waiting list until that time. This package of support mirrored that received by C.

- 6.3 In January 2016 there was a review of C and D's care packages. Mrs B claims that the social worker stayed for no more than five minutes during the assessment visit. Despite this, at the end of January the social worker verbally presented the assessment to the Care Package Panel. This decided D did not need respite accommodation and reduced D's direct payments from seven hours a week to four hours. The Council also reduced C's respite stays from 24 a year to 12.
- 6.4 The social worker relayed the Panel's decisions to Mrs B who was unhappy with the lack of reasons for the decision to reduce both children's care packages, and so in February 2016 Mrs B made a complaint to the Council.
- 6.5 In April, the Council sent Mrs B the Stage 1 response to her complaint. This was under the Corporate Complaints procedure rather than the Statutory Children's Complaints procedure. The Council told Mrs B it would not make any changes to the children's care packages while her complaint went through the complaints process. Mrs B confirmed no changes were made although D was taken off the waiting list for respite accommodation.
- 6.6 The social worker completed the assessment of C and D in April 2016 and recommended further review in six months. This was not subsequently done. Mrs B was unhappy with the Council's response to her complaint and reports the social worker failed to tell her the outcome of the review for several months; or tell her when the recommended care package would start; and continued to fail to provide her with a copy of the assessment. Mrs B held the view that as she had less family support there was a greater need for the full original care package. She asked that the complaint be taken to the next stage.
- 6.7 In June 2016, the Council responded to Mrs B's Stage 2 complaint via the Corporate Complaints procedure. At this stage Mrs B approached the LGO who queried with the Council the use of the Corporate Complaints Procedure. The Council reported this was at the request of the complainant. The Council was asked to complete the process for Mrs B's complaint.
- 6.8 The Children and Young People's Complaints Service contacted Mrs B in August 2016 and confirmed the Council should have dealt with her complaint under the statutory children's complaints procedure and stated they would begin the appropriate process to investigate the complaint.
- 6.9 In September 2016, the LGO asked for an update from the Council, who replied that it was putting an internal complaints investigation team together but was finding it difficult to find an available Independent Person. The LGO asked for a further update at the end of October 2016. The Council replied the Independent Investigator and the Independent Person were meeting Mrs B on 3 November 2016.

- 6.10 Mrs B stated she had heard nothing from the Council since August. When contacted about this, the Council eventually confirmed it had arranged a meeting with Mrs B for the following week. The Council also confirmed it would send out the Independent Investigator and the Independent Person's reports and its own decision letter within 25 days of the meeting or 16<sup>th</sup> December 2016.
- 6.11 Between December 2016 and April 2017 there was a continued lack of progress from the Council in addressing the outstanding issues with the complaint. The LGO took up the complaint and allocated it for investigation in January 2017 due to lack of progress in addressing the complaint.
- 6.12 Responses were required by the Council by 27<sup>th</sup> February 2017 but these were significantly delayed with various reasons offered as to why the Council could not supply requested material. In April when information was provided to both the LGO and Mrs B relating to the outcome of the Stage 2 investigation, the complainant stated that she had lost all confidence in the Council and requested the LGO to consider her complaint rather than to take it to a Stage 3 Panel. The LGO agreed. This Report details its findings.

## **7. Recommendations from the LGO (Abridged)**

- 7.1 The LGO recommended the Council apologise to Mrs B for the time taken to deal with her complaint and for the fault found with the way it dealt with the assessment.
- 7.2 The LGO also recommended the Council pay Mrs B a total of £550 for the distress caused and for the poor handling of her complaint.
- 7.3 The Council should ensure greater transparency of the Care Package Panel's decision making process. Parties to the assessment presented to the Panel should have had sight of it and had opportunity to provide their views. Written reasons for the decisions made should be sent to the relevant parties. The Council should confirm in writing that it has made the required changes to its procedures within three months of the Report date.
- 7.4 The original respite provider should be approached to clarify if D would have been offered respite had his name remained on the waiting list in operation at that time. The Council should provide two overnight stays for each month missed since the complaint began over the next 12 months.
- 7.5 The Council should conduct a review of the operation of its procedures for identifying and dealing with complaints involving children and young people to meet its statutory duties. The Council should inform the LGO of the outcome of that review within three months of the date of the report.
- 7.6 The Council should carry out these recommendations as soon as possible but no later than three months of the date of the LGO report.

## **8. Management Response**

- 8.1 Whilst the Service accepts the findings and is implementing the recommendations fully, it maintains that the full picture of the interface with the family is not reflected in the LGO's report. The original assessment was not limited to the short period referenced in the Report and the outcomes sought were based on a fuller understanding of the family's situation than is suggested. The poor handling of the successive stages of the complaint however contributed to an overall impression of a complainant let down by the Council.
- 8.2 The governance processes of the Care Package Panel are being reviewed and the LGO's recommendations incorporated into new Procedures. The Children with Complex Needs Team continues to be a focus of service improvement, having has in particular a high proportion of agency staff.
- 8.3 The executive Director for Children and Young People has written to Mrs B to formally apologise for the shortcomings within the original assessment process and for the subsequent poor handling of her complaints. The monetary element of the LGO's recommendations will be paid to Mrs B imminently.
- 8.4 The particular needs of the two boys have been reassessed and the recommendations of the LGO will be incorporated into the arrangements made. The respite offer might differ through a more creative respite support package. These options will be fully discussed with Mrs B.
- 8.5 A full review of the Children's Complaints Service is currently being initiated. A training programme has been commissioned by the Children's Complaints Service to provide a cross-section of managers likely to be involved in Stage 1 and Stage 2 complaint responses, with the knowledge necessary to understand the processes that underpin effective complaints handling.
- 8.6 Children's Social Care has already implemented a process whereby complaints at Stage 2 are outsourced to specialist investigators to provide a timely and professional response.
- 8.7 The relevant staff within the Children's Complaints Service in the timeframe of this complaint's most difficult period are no longer in the Council's employ.

## **9. Financial implications**

- 9.1 There are no financial implications arising from this report.

## **10. Legal implications**

- 10.1 The Commission for Local Administration, usually known as the Local Government Ombudsman ("LGO") was established by the Local Government Act 1974. The Local Government Ombudsman covers local authorities and other specific public bodies.

- 10.2 The 1974 Act sets out that “injustice” suffered, must arise from the fault by the authority. Injustice may include any one or more of the following: hurt feelings, distress, worry, or inconvenience, loss of right or amenity, not receiving a service, financial loss or unnecessary expense, time and trouble in pursuing a justified complaint.
- 10.3 Where the Ombudsman reports that there has been a finding of fault leading to injustice a report is sent to the parties involved. Section 92 of the Local Government Act 2000 gives Local Authorities the power to pay compensation or provide some other benefit to a person adversely affected by the actions of the Council or its Officers. The Ombudsman makes recommendations but cannot compel the Council to implement its recommendations.
- 10.4 There is no right of appeal against a decision by the Local Government Ombudsman. It may be possible to apply for a judicial review of that decision, subject to obtaining leave from the Court. Such a challenge is not however on the merits of the decision itself, but upon the legal basis of the decision.
- 10.5 The Council when carrying out its functions, must always seek to comply with the Equality Act 2010 (the Act). It introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 10.7 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 10.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are

legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

10.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

10.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

## **11. Crime and disorder implications**

11.1 There are no direct crime and disorder implications arising from this report.

## **12. Equalities implications**

12.1 There are no direct crime and disorder implications arising from this report.

## **13. Environmental implications**

13.1 There are no environmental implications arising from this report.

## **Background papers and report author**

If you require further information about this report, please contact Warwick Tomsett, Head of Targeted Support & Joint Commissioning on 020 8314 8362

The full report produced by the LGO is included at Appendix 1.