

Mayor and Cabinet			
Report Title	Local Government & Social Care Ombudsman published report on CWCN and AWLD		
Ward	All	Item No.	
Contributors	Executive Director for Children & Young People Executive Director for Community Services		
Class	Open	Date	20 September 2018

1. Purpose

- 1.1. This report brings to the Council's attention the outcome of a Local Government and Social Care Ombudsman (LGSCO) investigation following a complaint from a Lewisham resident regarding services provided by the Children with Complex Needs Service and Adults with Learning Disabilities team. The complaint was upheld.

2. Executive Summary

- 2.1 The LGSCO final report explains that a resident, who is a mother and carer for a young person with learning disabilities, complained about the way the Council assessed her son's eligibility for special educational provision, social care and transport when he transferred from school to college aged 19. She also complained about the Council's failure to offer a personal education budget or to mediate disagreements.
- 2.2 The resident claimed that she had been caused injustice by the actions/inactions of the Council as she could not look for paid employment because the Council expected her to be available to drive her adult son to and from his college and activities. She also claimed that she had been put to unnecessary time and trouble pursuing a complaint; and her son had no support workers to take him to his weekly activities, so he had to attend with his mother, which compromised his previous independence.
- 2.3 There followed a protracted period where the LGSCO asked for updated information and gave expectations for when that information should be provided, only for there to be repeated delays in the Council's response.
- 2.4 The LGSCO report attached at Appendix 1 gives the Ombudsman's finding of fault leading to injustice in several areas covered by the complaint

3. Recommendations

- 3.1 It is recommended that Mayor and Cabinet note the contents of the report and forward to Full Council for consideration.

4. Policy & Legislative context

- 4.1 Lewisham Council's Corporate Priorities are:

- 4.1.1 Community leadership and empowerment – developing opportunities for the active participation and engagement of people in the life of the community
- 4.1.2 young people's achievement and involvement – raising educational attainment and improving facilities for young people through partnership working
- 4.1.3 clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment
- 4.1.4 safety, security and a visible presence – partnership working with the police and others and using the Council's powers to combat anti-social behaviour
- 4.1.5 strengthening the local economy – gaining resources to regenerate key localities strengthen employment skills and promote public transport
- 4.1.6 decent homes for all – investment in social and affordable housing to achieve the decent homes standard, tackle homelessness and supply key worker housing
- 4.1.7 protection of children – better safeguarding and joined up services for children at risk
- 4.1.8 caring for adults and older people - working with health services to support older people and adults in need of care
- 4.1.9 active, healthy citizens – leisure, sporting, learning and creative activities for everyone
- 4.1.10 inspiring efficiency effectiveness and equity – ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community

- 4.2 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.
- 4.3 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
- 4.4 Lewisham’s SEND Strategy 2016-19 sets out the vision for children and young people with Special Education Needs and Disability and their families and sets out the three key areas for change for Lewisham:- ,
1. Children and young people (0-25yrs) with SEND and their families are informed and empowered to be more **resilient and independent** within their communities.
 2. Children and young people with SEND who have been identified as requiring additional support across Health, Social Care and Education receive the **right support at the right time** in order to enable them to become as independent as possible
 3. Children and young people with SEND have the opportunity to be educated within Lewisham’s education provision and are provided with the right support to enable them to **achieve their full potential**.
- 4.5 Under the Children and Families Act 2014, the Special Educational Needs and Disabilities (SEND) reforms emphasize the importance of improving the life chances and well-being for young people with complex needs.
- 4.6 Under the Care Act 2014 and Care Act Guidance, councils have a duty to carry out an assessment where ‘an adult may have needs for care and support’ and also consider carrying out a carer’s assessment if it appears a carer may have need for support.

5. Background and detail of the findings

- 5.1 The LGSCO is the final stage for complaints about councils and some other organisations providing local public services. Once the LGSCO concludes his investigation, if he finds there has been fault or injustice, he is 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 LGSCO is also able to require the Council to take certain actions, in this case the Council has been required to release a public notice in more than

one newspaper within two weeks of the LGSCO report being published, and to make the report available at one or more of the Council's offices for three weeks.

5.3 Fault was found because:

5.3.1 the Council delayed in completing the transfer from a Statement of Special Educational Needs to an Education Health & Care Plan (EHCP), missing the statutory timescale

5.3.2 the Council took too long to complete a Care Act assessment and failed to assess, as part of that assessment, Mental Capacity, transport needs to college and leisure activities, and carer's needs;

5.3.3 the Council did not provide information about transport at an appropriate time and has not recognised its duties under s.508f of The Education Act; and

5.3.4 the Council misinterpreted the terms of the Mobility Care Scheme.

5.4 The LGSCO criticised the Council for not having in place a post-19 transport policy, noting the absence of such means that young people and their families in the Council's area cannot make informed decisions about post-19 placements and thus cannot easily challenge the Council's decisions about transport.

6. The LGSCO's recommendations

6.1 The LGSCO has made 28 recommendations in total. A comprehensive list is included in the final report and has been included as a separate action plan at Appendix 2.

6.2 In the main, the Council must consider the report and its recommendations and within three months confirm the action it has taken or proposes to take as a result.

6.3 Some of the recommendations made place an expectation on the Council to provide its resident with a financial remedy.

6.4 Additionally, the report must be tabled for discussion at full Council, cabinet or other appropriately delegated committee of elected members, at which the Council must evidence within three months the action it has taken.

7. Management Response

7.1 The CWCN Service, and Adults with Learning Disabilities team, accept the findings and are implementing the recommendations. While some aspects of

the findings flow from an interpretation of the obligations on councils that was not expected by Lewisham or many other local authorities, the report has also highlighted shortcomings our in handling of complaints which are being addressed urgently.

- 7.2 The Executive Director for Children and Young People has written to the resident to apologise formally for the shortcomings highlighted. The letter is attached as Appendix 3.
- 7.3 The financial compensation recommended will be made available imminently as soon as the council has the information from the resident required to complete the payment.
- 7.4 The CWCN service has undertaken a retrospective review of Mr Y's eligibility for travel assistance in relation to section 508f of the Education Act and judged Mr Y to be eligible. Mr Y is currently living out of borough with Ms X. The family have been contacted and it has been agreed with the family that a fresh application will be submitted when the resident returns to the borough. It is very likely that Mr Y will be eligible for travel assistance under Section 508F and will be provided with travel assistance free of charge.
- 7.5 The CWCN service and AWLD team are in the process of collating information about other young people who may have been affected in the same way as Mr Y. It has been identified that there are 230 young people over 18yrs with an EHCP and 70 of those young people already receive travel assistance.
- 7.6 The AWLD team has been in contact with the resident regarding the Care Act assessment and the other issues in the Ombudsman recommendations. He has however temporarily moved outside the borough of Lewisham.
- 7.7 The Council did have a post 16 transport statement in addition to the home to School 5-16 Transport Policy in 2016. This statement is updated yearly but did not specifically detail Section 508F of the Education Act. Last year (2017) the Council developed a post 16 transport policy. The LGSCO found fault as this policy did not reflect section 508F of the Education Act. The Council's policy has been updated to reflect section 508F and is available on the Council web site and as part of the SEND Local Offer.
- 7.8 The CWCN Service has provided all relevant staff within the Service with information on the updated sections in the Education Act and provided them with the updated post 16 Transport Policy. The CWCN Service will develop a new 0-25 transport policy over the next year.

8. Financial implications

- 8.1 The total remedy to be paid to the resident is £9,700. The resident has been asked to provide banking details so that a payment can be made.

8.2 Work is underway to assess how many other residents are affected by these recommendations and the resulting costs.

9. Legal implications

9.1 The Commission for Local Administration, now known as the Local Government & Social Care Ombudsman (“LGSCO”) was established by the Local Government Act 1974. The Local Government Ombudsman covers local authorities and other specific public bodies.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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.

9.8 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/>

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

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

9.10 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/>

10. Crime and disorder implications

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

11. Equalities implications

11.1 The council has many decision making processes where it is gatekeeping and assessing users’ eligibility for services. It is vital that the council is fair and

seen to be fair, especially for services users who are vulnerable by reason of disability or other issues.

12. Environmental implications

12.1 There are no environmental implications arising from this report.

13. Background papers and report author

If you require further information about this report, please contact Sara Williams, Executive Director for Children & Young People on 020 8314 8527.

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