

## AUDIT COMMITTEE – 20 July 2018

<b>Title of paper:</b>	Local Government Ombudsman Report on an Education and Children’s Services Matter	
<b>Director(s)/ Corporate Director(s):</b>	Alison Michalska, Corporate Director for Children and Families Candida Brudenell, Corporate Director for Strategy and Resources	<b>Wards affected:</b> All
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<b>Other colleagues who have provided input:</b>	Malcolm Townroe, Director of Legal and Governance Nick Lee, Head of Access and Learning	
<b>Recommendation(s):</b>		
<b>1</b>	To consider the report of the Local Government Ombudsman.	
<b>2</b>	To agree that the relevant services should comply with the recommendations of the Local Government Ombudsman contained within the report.	

### **1 REASONS FOR RECOMMENDATIONS**

- 1.1 The Local Government and Social Care Ombudsman (LGO) have issued a report following a complaint made to them by a citizen about a school admission appeal hearing. Following an investigation the LGO have issued a report on their findings which is attached as an appendix to this report. When the LGO issues a report, local authorities are required to take that report to a public meeting of Council or a committee with delegated responsibility for considering LGO reports. This committee has been delegated this responsibility by Council as recorded in the Committee’s Terms of Reference. While the report is dated 17 May 2018, the LGO did not publish it until 5 July. Therefore the report could not have been brought to an earlier meeting of the committee.
- 1.2 The LGO’s report has been the subject of significant discussion between the Council and the LGO, including a complaint from the Council regarding the process of the investigation. As a result of the Council’s concerns the final decision has been substantially redrafted to the point that colleagues are now able to recommend to Audit Committee that the recommendations made by the LGO are complied with.

### **2 BACKGROUND**

- 2.1 The LGO considers complaints in relation to school admission appeals when the appeal in question concerns a local authority maintained school. It does not have authority to overturn decisions made by independent Appeal Panels but if it finds fault with the process followed it can recommend a re-hearing.
- 2.2 School Admissions are managed by the Council’s School Admissions Team who manage the admissions process and allocate school places in accordance with schools’

published admission criteria. When a place is refused the parent or guardian has a right of appeal. The School Appeals Team manages this process, arranging for the appeal to be heard by an independent panel in accordance with the School Admissions Appeals Code 2012. The Admissions Team is represented at the hearing and the appellant can attend and present their case. The Panel's decision is binding on all parties.

2.3 During the 2017/18 financial year the School Appeals Team processed 647 appeals against a decision to refuse a school place. Of these 438 progressed to the hearing stage (the remainder having been withdrawn by the appellant or offered a place at the appealed for school prior to the hearing). If an appellant is unhappy with the appeal process their complaint must be dealt with by the LGO (or the Education Funding Agency in the case of academy appeals). Four complaints, including this one, were sent to the LGO during 2017/18. Three were dismissed without moving to the investigation stage. The services take feedback from the LGO seriously. On the very few occasions the LGO has made recommendations in relation to other complaints those findings and recommendations have always been accepted and practices changed as a result. The services will review processes in light of the LGO's comments in this report.

#### 2.4 **Timeline**

On 23 January 2017 an appeal was heard for Mrs D against a decision to refuse her application for a year five place for her son in a maintained city school. An independent Appeal Panel was convened by the School Appeals Team and upheld the decision to refuse. Mrs D was informed of the outcome of the appeal within five working days of the hearing. On 6 June 2017 the LGO informed the Council that Mrs D had submitted a complaint about the conduct of her appeal. The LGO were provided with the records of the hearing and, on the basis of the information provided, decided to investigate.

2.5 On 8 August 2017, following an investigation, the LGO provided a draft decision to the Council. The decision found fault with the hearing and recommended a rehearing. The School Admissions Team and the School Appeals Team disagreed with the LGO's findings and responded on 10 August attaching a substantial amount of additional information. On 22 August the Council submitted a complaint to the LGO about how the complaint had been handled. This was responded to on 30 August and a revised draft decision was issued on 4 September. The teams responded to the revised draft decision on 27 September, detailing further concerns with the findings and process. A final draft decision was issued by the LGO on 10 October and the teams, having given the matter careful consideration, informed the LGO on 23 October that they could not accept the findings or recommendations due to the outstanding concerns with the process and findings themselves.

2.6 Due to the passage of time between the original hearing, the complaint being made and the issuing of a final decision, prior to the resolution of the complaint Mrs D applied for a year six place for her son in the same school. A hearing was arranged in January 2018 and the School Appeals Team invited the LGO to attend that hearing. No one from the LGO was available to attend.

2.7 Because the teams did not accept the LGO's findings and recommendations the investigation then moved to the report stage. A draft report was provided to the Council on 15 February 2018. On 17 May the LGO issued a final report which is the version attached to this report (subject to further minor amendments to ensure anonymity). The final version of the report had been subject to substantial amendment by the LGO. Due to this re-writing colleagues are now in a position to recommend that Audit Committee agree to comply with the recommendations.

## 2.8 LGO's Findings and Recommendations

As detailed in the attached report the LGO found fault with the Council, "primarily in relation to the adversarial questioning of the presenting officer". The three independent Panel Members, the clerk and the admissions presenting officer who were present at the hearing do not consider the questioning at the hearing to have been adversarial. The LGO has acknowledged this position in the final report. Acknowledging that determining the nature of the questioning can be a subjective matter and given the substantial changes made to the final report on this matter, colleagues are now able to recommend complying with the LGO's recommendations.

## 2.9 The specific recommendations made by the LGO are outlined below in italics, followed by the services' response:

*"The Council should:*

a) *apologise to Mrs D;*"

The School Admissions Team and the School Appeals Team regret any distress experienced by Mrs D and are sorry that she felt injustice has occurred. Due to the emotive subject matter dealt with at school appeal hearings and the traumatic experiences that are sometimes discussed, emotional distress can arise. Because of this, Chairs and Panel Members are trained in handling hearings sensitively. If agreed by the Committee, a letter of apology will be sent to Mrs D.

b) *"arrange a fresh Year Five appeal for Mrs D with a new panel, clerk and presenting officer;"*

Subject to Audit Committee's approval Mrs D will be offered a fresh year five hearing in line with the recommendation. It should be noted that, due to the lengthy passage of time since the first year five hearing (as detailed in paragraphs 2.4 – 2.7) the child concerned has now almost completed year six and will be transferring to secondary school in September.

c) *"ensure that appeal personnel are properly trained and understand their legal role including their functions as set out in the School Admissions Appeals Code (2012). The council should tell us when it has conducted this training and confirm that all appeal personnel have attended."*

All Appeals personnel (clerks, independent Panel Members and presenting officers) are well trained and extremely experienced in attending/ presenting Appeals. The Chair of the panel at the hearing in question has 15 years experience and sits regularly. Another appellant provided unsolicited feedback about her experience of her appeal hearing, which was chaired by this Chair and praised the "fair transparent and equitable process" and the "sympathy and understanding" shown for the appellants. Both services also provide paid for advice and services to some own Admission Authorities on their roles and responsibilities and are considered experts in their field. However, additional training will be provided.

## 2.10 The LGO's report states "We have invited the Council to offer a fresh appeal, but it has, so far, declined to do so." The teams did not feel it was appropriate to offer Mrs D a fresh appeal while simultaneously challenging the draft decision/ report. The challenge was made on the basis of a number of factual inaccuracies and the consideration of irrelevant information in the decision/ report and the process followed by the investigator in reaching her conclusions. The concerns about the decision itself have been addressed by the late re-drafting of the LGO's report. It is officers' view that the report now acknowledges the Council's view of events and is much more measured in its tone and accurate in its content.

- 2.11 In terms of the process followed, the Council's concerns were as follows:
- a) The Council submitted 17 pages of additional information (including 11 pages of handwritten notes of the hearing) in response to the initial decision. Eight minutes after the information was sent to the LGO the investigator contacted the Council advising that after considering the contents it was likely that she wouldn't be changing her decision. The Council did not feel that proper consideration could have been given to the additional information within this time. This was acknowledged by the LGO who provided assurances that the information was subsequently properly considered.
  - b) When the investigator came to a final conclusion she emailed a letter to the Council confirming that she would make some of the textual changes requested but that her decision that the case should be reheard would stand. She then asked the Council to agree to a re-hearing. She did not send through the final draft decision at this stage. It took a further two requests from the Council before the final draft decision was provided thereby enabling the Council to fully understand what it was being asked to agree to.
- 2.12 Given the report has now been substantially re-written colleagues are now content that the information provided by the Council has been properly taken into account and the factual inaccuracies have been addressed. Had these amendments been made earlier in the process it is unlikely that we would have reached the report stage.

### 2.13 **Outstanding Clarification**

Paragraph 19 of the report refers to a letter sent from the Admissions Team to Mrs D on 26 October 2016. The LGO state that this letter confirms Mrs D's position that there were no family members attending the school she had applied for. While accepting that the letter could have been more clearly worded, the service wishes to clarify that the letter was re-stating Mrs D's own previously stated view rather than confirming that view to be correct. The service has no way of knowing whether any extended family members are on roll at the school.

## **3 BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING EXEMPT OR CONFIDENTIAL INFORMATION**

3.1 None

## **4 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

- 4.1 Report of the Local Government and Social Care Ombudsman – attached as an appendix.
- 4.2 School Admission Appeals Code 2012.