

Audit Committee – 26 March 2021

Title of paper:	Local Government Ombudsman’s Report in the Public Interest following Investigation Reference 18 018 188	
Director(s)/ Corporate Director(s):	Nicholas Lee, Director of Education Services Catherine Underwood, Corporate Director for People	Wards affected: All
Report author(s) and contact details:	Anna Glozier, Special Educational Needs Service Manager anna.glozier@nottinghamcity.gov.uk	
Other colleagues who have provided input:	Janine Walker, Head of Service SEND and Vulnerable Pupils janine.walker@nottinghamcity.gov.uk	
Recommendation(s):		
1	To consider the Local Government Ombudsman’s Report in the Public Interest following Investigation Reference 18 018 188, and be assured that all recommendations contained within it have been fully enacted.	
2	To receive an annual monitoring report to ensure that new procedures and improved management oversight are effective in ensuring that the learning from the Local Government Ombudsman’s Report in the Public Interest are embedded and effective in the experience of applicants for SEND travel assistance.	

1 Reasons for recommendations

- 1.1 To ensure that members of Audit committee are fully briefed on the reasons for, and outcomes of, the Investigation Reference 18 018 188, and the activity connected with it, as required by the Local Government Ombudsman.

2 Background

- 2.1 In March 2016 a parent applied for and was awarded Home to School Transport for their son to attend a mainstream primary school. At the time, the family lived further away from school than the statutory walking distance, and the family reported the son had been provided with a wheelchair due to mobility difficulties. In 2017, following a house move closer to the school, his eligibility was reviewed, and revoked. While still living at the second address, the son was assessed through the statutory education, health and care assessment process, and issued with an Education, Health and Care Plan (EHCP) naming a special academy within the statutory walking distance from his home. His placement at the new school began in September 2018. The parent applied for Home to School Transport to the new school and the request was not granted. The internal appeals process was followed through Stage 1 (reviewed by an officer not involved in the original decision-making) and Stage 2 (reviewed by an independent panel) with the same result. After submission of further information from a paediatrician in May 2019, Home to School Transport was granted on the grounds of Special Transport Need. With the agreement of the parent, the travel assistance award has taken the form of a personal transport budget of £20 per day, which the parent uses to send her son to school by taxi.
- 2.2 The parent appealed to the Local Government Ombudsman (LGO) regarding the period of time that her son was considered not eligible for Home to School Transport. The LGO’s report summarises her complaint that:

- the Council unreasonably refused to provide home to school transport for her son to his previous school and the special academy for pupils with moderate learning difficulties named in his Education Health and Care Plan (EHCP);
- the Council failed to take proper account of her son's difficulty in walking long distances due to his hypermobility, or his diagnoses of autism, attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD) which make it difficult for him to use regular public transport;
- as a result, in order to get C to and from school, she has had to pay £400 a month to take C in a private taxi;
- this put her into debt on her utility bills and she was no longer able to afford the cost of a taxi for C; and
- this in turn has severely affected his school attendance and his social and educational development.

- 2.3 The LGO investigation revealed a number of ill-judged decisions and inadequate communications made by different individuals over a period of time that combine to make disappointing reading, and ultimately found 'fault causing injustice'. Comments were invited on the draft report, which were taken into account in the final report, issued on 10th November 2020.
- 2.4 The LGO made the following recommendations, to:
- apologise to the parent;
 - reimburse the costs incurred by the parent in getting C to school by taxi (based on £20 a day, plus interest based on the increase in the Retail Price Index):
 - School 1 - £568
 - School 2 - £943;
 - pay the parent £300 for her time and trouble in repeatedly having to make the same complaint and appeal;
 - pay the parent £1,000 to reflect the distress resulting from the difficulty and hardship caused to the whole family as a result of the withdrawal of transport and the cost of providing transport for her son
 - pay the parent £5,500 (11 months at £500 each), on her son's behalf, to remedy the impact of his lost schooling as a result of not receiving school transport.
- 2.5 These recommendations were agreed and met within the one-month deadline specified.
- 2.6 In addition, the LGO's report recommended that within three months of the date of the final report, Nottingham City Council will:
- review its procedures to ensure that decisions on school transport show how it has taken into account individual circumstances and the supporting evidence supplied, and explain the rationale for its decisions;
 - ensure that second stage transport appeals are properly minuted to provide a suitable record of the basis for those decisions; and
 - be able to demonstrate the new measures and procedures it will put in place to ensure its decisions and appeals are robust and defensible.
- 2.7 These recommendations were primarily based on the LGO's understanding that recommendations made following a previous unrelated investigation had not been followed. When comments were invited on the draft report, clarity was provided which has been acknowledged in the final report:

- In respect of procedural and policy changes, we accept that the Council has carried out the actions agreed in response to our earlier investigations and appreciate that the Council has already done much to avoid the circumstances which have led to the fault in this case. We also welcome the further steps that the Council has agreed to take to seek to ensure the robustness, fairness, clarity, and consistency of its decisions.

2.8 Specifically, we can confirm that:

- The Home to School Transport Policy is in line with the Government's home to school travel and transport statutory guidance for local authorities July 2014 (Annex 2) and is published correctly on the Nottingham City Council website.
- Letters to families do explain how decisions on school transport have taken into account individual circumstances and the supporting evidence supplied.
- Letters to families at second stage appeal do contain an invitation to present information in person.
- Second stage appeal hearings are minuted, and have been since January 2019.
- The process of decision-making, including the appeals process, has been reviewed to ensure decisions and appeals are robust and defensible.

2.9 To clarify the 'further steps' referred to in 2.7 above, when responding to the invitation to comment on the draft report, we provided the following information:

- Transport appeals are not commonplace, and as such we currently have no central log for them. They are investigated and responded to at Stage 1 by any senior SEN officer not involved in the original decision-making. Going forwards, we will pull together the data into a central monitoring system to allow for stronger management oversight and consistency of communication. We note particularly the advice contained at paragraphs 5, 8 and 12 [of the LGO report], which focus on transparency and consideration of the wider family circumstances, including any potential disruption to a child's education, and this is reflected in the recommended actions. We aim to ensure the consistency of this through the central monitoring system.

2.10 We believe our commitment to responding to the needs of families is reflected in a low incidence of second stage appeals, despite very clear signposting advice given in the response letters to first stage appeals. Transport appeals are not commonplace and it follows that second stage appeals are even more rare. During the three years between January 2018 and January 2021, our independent panel has heard second stage appeals from just nine families. Since we amended our policy and practice in response to LGO advice in July 2019, the panel has heard 3 second stage appeals. Our mistakes over time have been acknowledged and owned, and our policy and practice amended to reflect all learning and advice. Without detracting from the findings in the report, we believe that the failings identified in the 18 018 188 investigation, which covers a period of time between autumn 2017 and spring 2019, are guarded against under our current arrangements, and the LGO recognised this in the final version of the report.

2.11 The LGO requires that the Council consider the report at an appropriately delegated committee of elected members.

2.12 The LGO completed the investigation into this complaint by issuing a report because it was considered to be in the public interest to do so, given the significant injustice caused to the complainant, and because it was considered to be a significant topical

issue. To comply with requirements surrounding a Report in the Public Interest, a notice was put in 2 local newspapers advising of the existence of the report and how a copy could be obtained by any member of the public. A physical copy was made available at Loxley House reception. In addition, in consideration of current restrictions relating to the pandemic response, the notice advised that copies could be requested by email.

3 Background papers other than published works or those disclosing exempt or confidential information

3.1 N/A

4 Published documents referred to in compiling this report

4.1 Local Government Ombudsman's Report in the Public Interest following Investigation Reference 18 018 188.

4.2 The Home to School and College Travel Assistance Policy, August 2019

5 Finance Observations

5.1 The total spend included in this report of £8,311 is funded from the transport service.

5.2 The cost is in addition to the budget allocation captured in the Medium Term Financial Plan and will increase the 2020/21 adverse forecast outturn position reported at Pd9.

5.2 This cost is not recurrent and therefore there is no impact the MTFS in future years.

5.3 The development of a central monitoring system would benefit from including any financial risk for such cases that may attract reimbursement and compensation.