

CABINET
14 NOVEMBER 2019**UPDATE ON LOCAL AREA SPECIAL EDUCATIONAL NEEDS
AND DISABILITY (SEND) ACTION PLAN INCLUDING THE
LOCAL GOVERNMENT OMBUDSMAN REPORT**

Relevant Cabinet Member

Mr M J Hart

Relevant Officer

Director for Education and Early Help

Recommendation

- 1. The Cabinet Member with Responsibility for Education and Skills recommends that Cabinet:**
 - (a) acknowledges that progress is underway on the Written Statement of Action (Improvement Plan) to show how the agencies will tackle areas for improvement identified by that letter in order to improve outcomes for all children and young people with Special Educational Needs and Disability (SEND);**
 - (b) acknowledges the Department for Education and NHS England monitoring visit and feedback provided;**
 - (c) considers and notes the recommendations of the Local Government and Social Care Ombudsman Report; and**
 - (d) endorses the Action Plan in response to the Ombudsman's recommendations.**

Background

2. The Joint Ofsted and Care Quality Commission (CQC) local area Special Educational Needs and Disability (SEND) inspection took place 5 – 9 March 2018. The findings of the Inspection were published on 16 May 2018 (see Appendix 3). The inspection raised concerns about the effectiveness of the Local Area and requested that a Written Statement of Action (WSOA) be prepared by the Local Area and submitted to OFSTED/CQC. The WSOA was approved by the Cabinet Member with Responsibility and the Clinical Commissioning Group (CCG) Governing Body in August 2018. Ofsted then approved the plan as fit for purpose.

WSOA Progress reporting at SEND Improvement Board

3. At the recent SEND Improvement Board, workstream leads shared progress, impact and next steps against the Key Concerns. Updates included support for mainstream schools through the termly SENCo Network Seminars, that 113 SENCOs attended. Key topics shared with SENCOs included Education and Health Care Plan (EHCP) development, annual reviews and a focus on statutory matters and lessons learnt from casework.
4. Parent/carers are instrumental in the delivery of the WSoA. Families in Partnership (FiP) members work with officers to identify, review and progress the improvements required. FiP has developed a Stakeholder Reference group to have a greater reach of parent carers across the county. A prototype parent/carer SEND Survey was distributed in July, the analysis of this will inform a wider survey later this year. The SENDIASS Service has received additional funding from the DfE to increase engagement with young people, embed co-production in practice, increase and improve training offer for staff, and increase their reach on social media and other innovative approaches.
5. The multi-agency SEND Key Performance Indicator has been remodelled to focus on indicators for identifying, assessing and meeting the needs of children and young people and delivering outcomes. The data shared with the October Board included the provisional 2018/19 Key Stage outcome data which has improved slightly this year. Board members also noted trends around children and young people with EHCPs and additional vulnerabilities, for example missing school or electively home educated. The percentage of Looked After Children with up to date Health assessments continues to improve and referral to treatment timeliness rates for therapy services remain positive.
6. The development and sharing of the School Level Inclusion Profile with all schools has started. The profile provides schools with a tool to inform self-evaluation and planning. An updated profile will be distributed on a termly basis.
7. The CCG Leadership have nominated Dr Louise Bramble as the nominated SEND GP, together with SEND Champions embedded across Health and other partners. The CCG is continuing to deliver through Autism West Midlands, Autism and Anxiety Training for parent/carers. Together with additional workforce and a new support model to reduce waiting times for the Umbrella Pathway and access to mental health services, parent/carers are providing more positive feedback. A Mental Health Network for Secondary Schools has been launched, led jointly by health and education.
8. The updated Graduated Response guidance for professionals was launched to early years providers and schools in September 2019. A parent/carer version is being co-produced starting with parent/carer workshops in October/November.
9. In 2018 the Council allocated additional resource to increase the SEND Assessment and Planning Team. The impact of this additional resource can be seen within the timescales of EHC plans. 63% of EHC plans were issued within the 20 weeks in July 2019 compared with 12% in August 2018. The SEND Group Manager and

Lead Commissioner for Adult Learning Disabilities are working together to understand, plan and review the needs of young people and families using the Preparing for Adulthood principles approach.

10. The Local Offer website continues to be improved in terms of content. Promotion to parent/carers, young people and professionals is embedded into everyday practice. The number of visitors on a monthly basis continues to rise, 17,480 visitors in September 2019. A Children with Disabilities register is also now available, with 349 children registered to date (October 2019).

11. Academic Outcomes, behaviours and attendance are included in the SEND Key Performance Indicator Framework. 2018 attainment for SEN Support pupils in the Early Years Foundation Stage was positive compared to national figures and continues to improve over time. Progress and attainment of school-age SEND pupils in 2018 showed variation with some areas of improvement apparent e.g. progress of children with EHCP in Key Stage 2. Early indications from 2018-19 academic outcomes data are positive and will be verified for quarter 4.

Department for Education and NHS England Monitoring

12. Since June 2018 advisers from the both DfE and NHS England have held joint monitoring visits to assess the progress on delivering the WSoA. There have been 5 monitoring visits since June 2018, the most recent being in October 2019. The monitoring visits coincide to include attendance and observation by the advisers of the SEND Improvement Board meetings.

DfE feedback from October 2019 monitoring visit includes:

- The Local Area is making good progress with the Written Statement of Action
- the Company (Worcestershire Children First) was launched at the beginning of October, there is a strong sense of drive and optimism amongst the SEND Partnership Board members
- the appointment to the position of Assistant Director for SEND and Vulnerable Learners gives confidence, stability and continuity. Previous concerns about the continuity of effort across both the organisational change, and personnel change in key lead roles in SEND have been considerably assuaged by this visit
- the planned integration of key SEND services in 2020 will bring great benefits to the sense of cohesion among Council services
- it is estimated that the SEND team has capacity to deliver a good service and rates of completion of new Education Health and Care Plans in 20 weeks are improving, but further improvement is needed.

Particular strengths noted by the DfE adviser from the reports presented to the SEND Improvement Board include:

- A co-produced recommissioning of overnight short breaks provision

- referral to treatment rates for waiting times for health therapy services
- new guidance issued for schools on the use of part-time provision
- the development and publication of school inclusion data profiles
- Director-led weekly meetings on Children Missing Education
- the success and service user feedback of the training for parents of children and young people with ASD and anxiety
- updated guidance on school support and work with SENCo's in mainstream schools to embed it
- improved coordination among SEND training providers, and
- the development and prototyping of a Families in Partnership parents survey.

Local Government Ombudsman Report

13. The SEND Improvement Board was made aware of the August 2019 Local Government and Social Care Ombudsman report of the investigation into a complaint made by a parent carer concerning her son. The Ombudsman's finding was that the Council was at fault because of maladministration, and that injustice was caused. The report is referenced at Appendix 1.

14. Announcements were placed publicly on 13 September in accordance with statutory requirements.

15. The Council is also required to consider the report at an appropriately delegated Committee of the Council, in this case, Cabinet.

16. Within three months of receiving the Ombudsman's Report (or a longer period which must be agreed in writing with the Ombudsman) the action that the Council has taken, or proposes to take, must be communicated in writing to the Ombudsman.

17. The key areas of maladministration in the Ombudsman's report relate to:

- (i) failing to provide education for Child Y and make the special educational provision specified in the EHC Plan over a period of 13 months;
- (ii) failing to update Child Y's EHC Plan;
- (iii) agreeing with a school's approach to informal exclusion, and so supporting an approach that was in breach of the Exclusions Code.

18. The Ombudsman made recommendations that have been accepted in principle by the Director of Education and Early Help on behalf of the Council. The recommendations included action to be taken by the Council to:

- (i) remedy the injustice caused by fault;
- (ii) prevent a recurrence of fault;
- (iii) review the potential for injustice to future complainants;

- (iv) consider the Report and confirm within three months the action it has taken or proposes to take.

19. Following the publication of the Ombudsman's report an Action Plan was prepared (see Appendix 2) and an apology sent from the Director of Education and Early Help to the parent carer on 5 September 2019.

The details of the case

20. On the LGO web-site the summary of the report reads,

“ Ombudsman criticises Worcestershire County Council's complaints policy in special educational needs investigation The Local Government and Social Care Ombudsman has criticised the way Worcestershire County Council dealt with a mother's complaint about the lack of alternative education provided for her son, when mainstream school was no longer suitable for him.”

21. Child Y has complex SENs and a range of professionals from across Health, Social Care and Education services were involved. Child Y's needs posed particular problems in relation to provision. All professionals agreed that a different school (to that which he attended) was needed. Child Y's age meant that it was difficult to find the type of placement that was needed. Whilst professional contact and some home-based activities were arranged, and his school was funded to make some provision, the educational provision was not suitable because it did not deliver the special educational provision set out on the EHC Plan. Additionally, it took officers significantly longer than is normally the case to identify a suitable placement.

22. When a suitable placement was identified and supported by the parent carer as being a suitable placement for Child Y, the age registration of this school needed to be changed through Ofsted. This added to the delay in starting Child Y's placement. Officers were attentive to their contact with school and securing some support for the family, but the arrangements made were insufficient. Their efforts to secure a placement resolution and maintain contact across professional services led to an omission in their planning – that Child Y was not attending the school named on his EHC Plan and therefore, the expectation that Child Y would not attend the school, led to the position where Council officers had supported an unlawful exclusion by the school.

23. Over this period of time, professionals kept in touch with the family, and specialist support was appointed by the SEND Service to work with the family. However, officers did not ensure that full-time or suitable education was in place for Child Y and neither did they amend the EHC Plan.

24. In June of this year a formal offer of a place was made by the school and a transition programme before the summer holidays. Contact with the school just over one month before the date of this Cabinet meeting, indicates that Child Y has settled into school, is attending full-time and making good progress.

Action taken to ensure professional staff have learned from this case

25. Written instruction has been given to Children's Services professionals that unless there is a valid reason for part-time attendance, it should be treated as an

informal (and thus unlawful) exclusion. Within this note, SEND officers, children's social care staff and education welfare officers are reminded that they should all have knowledge of the range of services available that could support a family when a child is out of school for an extended period and work together to ensure the needs of the child, parent, carers and siblings are considered and appropriate support given.

26. Lessons learned from this case have been explored with School SENCOs in the termly briefing seminars. SENCOs were reminded that an informal or unofficial exclusion is one that is not recorded formally, and that such exclusions are unlawful. A related briefing was held for the SEND Service for their learning and to ensure that there was coherence in briefings to schools and briefings to the central SEND service.

27. Guidance from the DfE and related guidance from the NCB (National Children's Bureau) and IPSEA (Independent Panel for Special Educational Advice) has also been highlighted to officers.

Legal, Financial and HR Implications

28. Officers need to be supported to apply various aspects of education law to their core professional area of work. In this case, this related to informal or unofficial exclusions and their legal status.

Risk Implications

29. The Council needs to ensure compliance with the law. The Action Plan reduces the risk of non-compliance or further adverse LGO reports.

Impact Implications

30. A Privacy and Public Health Impact screening and a Health Impact screening have been completed in respect of the activity in the Written Statement of Action. The screenings did not identify any potential considerations requiring further consideration during implementation.

31. The Council must, during planning, decision-making and implementation, exercise a proportionate level of due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- 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.

32. A full Equality Impact Assessment (EIA) has been carried out in respect of the WSoA. This identified potential positive impact for children and young people with disabilities. The potential positive impact relates to improvements in access to information and support available, increased engagement and co-production, access to mainstream education (where appropriate). The recommended course of action can be justified because the activity in the Improvement plan will improve outcomes for all

children and young people with SEND. The full EIA is at Appendix 4. The Privacy Impact Assessment is at Appendix 5.

33. The Local Government Ombudsman report relates directly to a child with an EHC Plan, and failure to provide education according to the special educational provision determined on the EHC Plan. Children with EHC Plans can be more difficult to place in a suitable setting and more likely to have a constellation of needs for which making co-ordinated provision presents challenges. The report also deals with unofficial and informal exclusions, both of which are unlawful. Children with SEND are more likely to be excluded or subject to informal arrangements that may not be properly recorded and may be construed as an informal exclusion. The work of the Children Missing Education Officer team (that identify and track children who are missing their education through non-attendance, exclusion, or other reasons) will continue to identify pupils for whom unauthorised absence is a recurrent feature of their attendance profile and seek action to resolve and ensure children can access education settings.

34. Reminding staff of the requirements governing exclusions will advance equality of opportunity for and eliminate discrimination against pupils with SEND. A review of the corporate complaint's procedure provides us with an opportunity to assess that procedure for potential equality impact.

Supporting Information

- Appendix 1 – Report of the Local Government Ombudsman on the LGO web-site - <https://www.lgo.org.uk/information-centre/news/2019/sep/ombudsman-criticises-worcestershire-county-council-s-complaints-policy-in-special-educational-needs-investigation>
- Appendix 2 – Action Plan
- Appendix 3 - Programme Plan overview – available electronically
- Appendix 4 – Equality Impact Assessment – available electronically
- Appendix 5 - SEND Privacy Impact Screening – available electronically

Contact Points

County Council Contact Points

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Specific Contact Points for this report

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Background Papers

In the opinion of the proper officer (in this case the Director of Education and Early Help) the following are background papers relating to the subject matter of this report.

- Agenda and background papers for the meeting of the Cabinet held on [12 July 2018](#)

- Agenda and background papers for the meeting of the Cabinet held on [14 March 2019](#)