

## Standards Committee

4 March 2019

Part I

### Report by the Local Government and Social Care Ombudsman

#### Report by Director of Law and Assurance

##### Executive Summary

The Ombudsman has published a report of an investigation into a complaint against the County Council, because the Council has decided not to accept the Ombudsman's recommendations.

##### Recommendation

The Committee is asked to consider whether it wishes to comment on the position the Council has taken on the case in light of the LGO's stance and the presumption that LGO investigation outcomes should be respected and to advise whether any particular action should be considered in light of the report.

#### 1. Background

- 1.1 On 12 December 2018 the Local Government and Social Care Ombudsman (LGO) published a report of an investigation into a complaint against the County Council. The LGO took this unusual step because the County Council decided on this occasion not to accept the LGO's recommendations. Although we usually do accept the LGO recommendations in full, on this occasion officers decided that it would be to concede a position relevant to future similar situations which the Council was not advised to take.
- 1.2 The full report is attached for information, but in summary:
  - The complaint the LGO investigated was: Mrs X complains that the Council failed to provide appropriate support and education for her daughter (*Child Y*) when she refused to go to school because of high levels of anxiety, but instead took action against the parents for her non-attendance.
  - The complainant's position was that her daughter should have been treated as having an illness which prevented her from attending school. However no medical evidence to support this was ever presented either to the school or to the Service to support this position. The Service decided that there was possibly anxiety involved and was working with the young person on that basis to try to get her back into school. Mr and Mrs X at one point said that the prosecution route *should* be engaged as they believed that Y would then understand the seriousness of the position and then would start to attend.
  - The Service's position was therefore that Y was correctly treated as a school refuser, was being supported appropriately, and that to have

provided alternative education would have reinforced the refusing behaviours and thereby undermined the attempts to get Y back into school.

- The LGO decided that the Council should have supplied alternative education despite no medical evidence having been provided; and recommended a financial remedy.

1.3 The Service felt that this would set an unhelpful precedent under which any school refuser would have to be supplied with alternative education, whatever the evidential justification and the officers with service responsibility decided, on balance, not accept the recommendation.

## 2. **Current Situation**

2.1 The LGO published the report on their website on 12 December 2018.

2.2 The Council has, as required, placed two public notice announcements in local newspapers/newspaper websites (w/c 21 January 2019). It has also, as required, informed the LGO about the public notices.

2.3 The Council is required to make copies of the report available to the public (free of charge) at one or more of the offices for three weeks following the public announcements. In this case, the Council has published the report on its website, and also made copies available at County Hall reception.

2.4 The report must be considered either in full Council, Cabinet or other Committee. At West Sussex County Council, this is a role for the Standards Committee.

2.5 The Council must inform the LGO what action it has taken, or intends to take as a result of the report.

2.6 The LGO informed the Council on 8 January 2019 that it had misread its own procedures and hence misinformed us about the necessary process. It appears that the report should have been considered by the Standards Committee within three months of *receipt* rather than *publication*. The Ombudsman's office has acknowledged that this was their error and has extended the period for consideration to meet the timescales originally agreed.

## 3. **Resource Implications and Value for Money**

3.1 The Council's stance is that it does not accept the recommendation. If it were to accept the recommendation, this could be seen as setting a precedent which would have financial implications for the Service.

3.2 There would be resource implications for the service should LGO investigation outcomes be implemented without consideration of their impact on Council resources as a relevant factor in deciding whether the actions recommended by the LGO report in any case be met. The specific resource implications would need to be considered on a case by case basis, dependent on their proportionate impact in the context of the action being recommended.

#### 4. **Risk Management Implications**

4.1 None arise.

#### 5. **Other Considerations – Equality – Crime Reduction – Human Rights**

5.1 None in relation to the Ombudsman's report. There will be equality impact considerations and Human Rights considerations in relation to the original decision and the subsequent consideration of the LGO's recommendation.

5.2 The individual young person would have been identified as having a qualifying disability in connection with the possible causes of her non-attendance at school and in terms of the approach the Council needed to take in connection with meeting her needs. That would require careful consideration to ensure that any decision about formal action took full account of the Council's duties to avoid discrimination or unfair treatment.

5.3. In addition the parallel duty to ensure that no young person is prevented from having access to education (Human Rights Convention) would have been a primary consideration in dealing with the problem which was presented to the service and in addressing the action recommended in the LGO investigation outcome. The priority would have been to ensure that the young person had access to education. The financial implications of alternative provision arrangements would however have been a relevant factor alongside the considerations linked to the young person's presenting needs and how they could best be met.

**Nicola Bulbeck**

Executive Director Communities  
and Public Protection

**Rachel North**

Director of Communities

Contact: David Tominey 033022 22285

#### **Appendices**

1. LGO's report

#### **Background Papers**

None