



Purpose: For Decision

Name of meeting	CABINET
Date	16 JUNE 2021
Title	CONSIDERATION OF AND DECISION ON THE REPORT OF THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DATED APRIL 2021
Report of	MONITORING OFFICER

EXECUTIVE SUMMARY

1. This report concerns the findings and recommendations of the Local Government and Social Care Ombudsman ('LGSCO') in response to a complaint made to the local authority.
2. The production of this Monitoring Officer report is a statutory requirement under Section 5A (2) of the Local Government and Housing Act 1989 ('the Act').
3. This statutory duty on the Monitoring Officer to personally report to the local authority's executive body (Cabinet) is triggered in these circumstances where the LGSCO has conducted an investigation into a complaint against the local authority and the LGSCO has in their formal report found fault leading to maladministration and injustice (as is mentioned in Part III of the Local Government Act 1974).
4. The Cabinet is under a duty to consider this statutory report of the Monitoring Officer at a meeting held not more than twenty-one days after copies of the section 5A (2) report ('the Monitoring Officer's report') are first sent to members of the Cabinet. As the meeting is to be held on 16 June 2021, this will be complied with.
5. As soon as practicable after the Cabinet has concluded its consideration of the report of the Monitoring Officer, the Cabinet is under a duty to prepare a report (a 'section 5A (8) report') which specifies –
 - (a) what action (if any) the executive has taken in response to the report of the Monitoring Officer;
 - (b) what action (if any) the executive proposes to take in response to that report and when it proposes to take that action; and
 - (c) the reasons for taking the action specified in the executive's report, or, as the case may be, for taking no action.

6. As the findings of the LGSCO and the recommendations made by the LGSCO have been accepted in full, the Cabinet is requested to endorse the corrective action reported by the Director of Children's Services in their appended report entitled 'Special educational needs service response to LGSCO report', adopting such report as the Cabinet's section 5A (8) report.

BACKGROUND

7. The report of the LGSCO is dated April 2021 (reference no. 19 012 699) and sets out their findings and recommendations. It was supplied to the local authority under an obligation to keep it confidential until the LGSCO published their report on the LGSCO's website. It was duly published by the LGSCO on 3 June 2021 and so that report itself is now no longer confidential.
8. The LGSCO found fault causing injustice in the local authority's handling of a special educational needs case.
9. The Council has agreed with the LGSCO to implement all the recommendations made by the LGSCO in accordance with an agreed timescale.
10. The appended report (and its appendix) by the Director of Children's Services to the Cabinet provides the background to this matter and contains details of corrective actions.

STRATEGIC CONTEXT

11. Ensuring that children are supported to achieve the very best for themselves when they reach adulthood is a strategic aim.

CONSULTATION

12. As required under the Act, the Chief Executive as Head of Paid Service and the Director of Finance as the Chief Finance Officer (Section 151 officer) have been consulted in the preparation of this report.

FINANCIAL / BUDGET IMPLICATIONS

13. There are no additional costs associated with the proposals contained in this report. The recommendations accord with the resources available within the overall budget agreed by Full Council in February 2021.

LEGAL IMPLICATIONS

14. In accordance with section 30 (3) of the Local Government Act 1974 the LGSCO has taken steps to ensure that the identity of the people in question is kept confidential and the Council is required to do the same, notwithstanding report publication.
15. The LGSCO indicated that their report will be published on the LGSCO's website on or after 3 June 2021 and it has been duly published on its website under reference number 19 012 699. These cabinet reports are therefore "open" reports.

16. Under section 30 (5) of that Act public notice, by advertisement in newspapers and such other ways as appears appropriate, is required to be given that copies of the LGSCO's report will be available for public inspection for three weeks, and such public notice must specify the date from which the period of three weeks will begin. (This start date cannot be more than one week after the public notice is first given). In accordance with the LGSCO's direction, such public notice cannot be given until after the LGSCO has released their report for publication and inspection.
17. Copies of the report are required to be made available without charge at the Council's offices after the LGSCO has discharged the obligation of confidentiality imposed on the local authority.
18. Clearly during the COVID-19 pandemic and resulting regulations in force these requirements under the Local Government Act 1974 for public inspection of copies of the report at all reasonable hours at the Council's offices are subject to the current regulations prohibiting or restricting attendance. The LGSCO refers to having alternative arrangements in place, for example sending individual copies to interested parties upon request.
19. The local authority has the statutory duty to consider the LGSCO's report, and the local authority must notify the LGSCO within three months of receiving the final report (or such longer period the LGSCO may agree in writing) of the action which the local authority has taken or proposes to take (see section 31 (2) of the Local Government Act 1974). This meeting is within that deadline.
20. LGSCO's recommendations are not legally enforceable although it is extremely unusual for a local authority not to accept them. It is generally accepted as good practice that a local authority should follow the recommendations of the LGSCO, who has the role of an independent arbiter between local authorities and complainants. Failure to comply with recommendations of the LGSCO, or a grudging or reluctant acceptance of the LGSCO's recommendations could lead to further adverse publicity.
21. If the LGSCO is not satisfied with a local authority's response, the LGSCO can publish a further report and can compel a local authority to publicise the LGSCO's views.
22. In this instance, Officers have accepted the findings of the LGSCO and agreed to implement all the recommendations of the LGSCO.
23. As soon as practicable after the Cabinet has prepared its 'section 5A (8) report', the Cabinet is required to arrange for a copy of it to be sent to each member of the local authority and to the authority's monitoring officer (see section 5A (9) of the Act)..

EQUALITY AND DIVERSITY

24. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share

it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The recommendations from the LGSCO are a proportionate response in recognition of the failings identified.

OPTIONS

25. **Option A:** That the Cabinet adopts the report from the Director of Children's Services as the Cabinet's section 5A (8) report, and endorses the response from Children's Services to address the findings and to implement all the recommendations of the LGSCO;
26. **Option B:** That the Cabinet does not accept the findings or recommendations of the LGSCO and does not adopt and does not endorse the response from Children's Services.

RISK MANAGEMENT

27. There are no additional risks associated with the recommendation.

EVALUATION

28. The LGSCO has produced their report and has made its findings and recommendations known to the local authority. The local authority has accepted these findings and recommendations in full.

RECOMMENDATIONS

29. That the Cabinet considers the LGSCO report and the response from Children's Services,
30. **(Option A):** That the Cabinet adopts the report from the Director of Children's Services as the Cabinet's section 5A (8) report, and endorses the response from Children's Services in that report to address the findings and to implement all the recommendations of the LGSCO,
31. That the Cabinet notes that all members of the local authority and the Monitoring Officer will be provided with a copy of the Cabinet's prepared section 5A (8) report as soon as practicable if not already given a copy.

APPENDICES ATTACHED

32. Appendix 1 – Report of the Director of Children's Services entitled 'Special educational needs service response to LGSCO report'.

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