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Report of: *Executive Director, People Services*

Report to: *Cabinet*

Date of Decision: *16th December 2020*

Subject: *Special Educational Needs and Disabilities (SEND) – Ombudsman report*

Is this a Key Decision? If Yes, reason Key Decision:-	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000		<input type="checkbox"/>		
- Affects 2 or more Wards		<input type="checkbox"/>		
Which Cabinet Member Portfolio does this relate to? <i>Education & Skills</i>				
Which Scrutiny and Policy Development Committee does this relate to? <i>Children & Families</i>				
Has an Equality Impact Assessment (EIA) been undertaken?		Yes	<input checked="" type="checkbox"/>	No
			<input type="checkbox"/>	
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>				
Does the report contain confidential or exempt information?		Yes	<input type="checkbox"/>	No
			<input type="checkbox"/>	<input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-				
<p><i>“The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>				

Purpose of Report:

For cabinet to consider the outcome of a recent ombudsman report into Miss B and her son G in relation to fault regarding his education provision between 2014 and 2019.

Recommendations:

That cabinet agree the actions taken following publication of the report

Background Papers:

Investigation into a complaint against Sheffield City Council (reference number: 18 004 957)

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Karen Hesketh
		Legal: Deborah Eaton
		Equalities: Bashir Khan
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	<i>John Macilwraith, Executive Director, People</i>
3	Cabinet Member consulted:	<i>Cllr Abtisam Mohammed</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: <i>Andrew Jones</i>	Job Title: <i>Director of Education & Skills</i>
	Date: <i>7th December 2020</i>	

1. PROPOSAL

- 1.1 For cabinet to consider the outcome of a recent ombudsman report into Miss B and her son G in relation to fault regarding his education provision between 2014 and 2019.

To note that an apology has been made to G and his family.

To note that the financial compensation identified within the report has been provided.

To note that the Educational Psychology Service has started work with the school and family to identify any potential additional support that G requires.

To date this has included contact with the family, school and services such as CAMHS to ensure that assessments are updated so that a full report can be issued in December. An annual review will be held in January to consider any provision that is required within the EHC Plan.

To note that the council has reviewed alternative provision being made within EHC Plans and is developing an action plan to address:

- any EHCP that names a non-educational provider;
- any inadequate alternative education provision; and
- any alternative provision that is not subject to a contract or has not been commissioned in line with the Council's agreed procedures.

The reference to alternative provision in this case relates to where children are directed to off-site provision to improve their behaviour as noted in legislative guidance, rather than alternative provision for pupils because of exclusion or illness.

<https://www.gov.uk/government/publications/alternative-provision>

Specifically, the council is building on a review conducted last year into alternative provision to ensure that the recommendations of the ombudsman are addressed via the review.

The council is working on an already planned updated alternative provision framework which focuses on quality, curriculum and appropriate checks. This will be implemented from the start of the next academic year. Until that time the current framework will continue to be used. Specifically, the council will not name any alternative provision in an EHC Plan unless it is on the framework and will be advising schools of this expectation.

The action plan for developing the curriculum intent and revised framework will be completed in January 2021 as part of building on the previous review. This will be provided to the ombudsman as evidence of

the actions taken.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The lessons learnt from the report build on action already taken to ensure that the type of unregulated provision offered to G will not be put in place in future. This means that the council will not directly commission unregistered and ill-equipped alternative provision such as the one put in place for G for children with EHC Plans. It should be noted that the council has not commissioned the provider who delivered provision for G for further children since spring 2017.

This will mean that where the council commissions provision within EHC Plans it will be appropriate to meet the child's needs and will sit within an accountability framework.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The report is provided by the local government ombudsman. There is no requirement to consult on this report.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 Decisions need to take into account the requirements of the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. This is the duty to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The Equality Act 2010 identifies the following groups as a protected characteristic: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

An Equality Impact Assessment has been carried out and highlights that the actions in response and the lessons learnt from the Ombudsman's report build on action already taken to ensure better provision that meets the child's needs and is a better experience for the SEN child or young person and their carers.

4.2 Financial and Commercial Implications

4.2.1 The following financial remedies are to be paid by Sheffield City Council to Miss B as directed by the Local Government and Social Care Ombudsman:

1. £19,950 representing G's missed education for the period from January 2016 to September 2019 (a total of 43 months)
2. £2,050 representing inconvenience, distress and loss of financial benefits suffered by Miss B.

A total payable by SCC to the Complainant, Miss B, of £22,000.

4.3 Legal Implications

4.3.1 Section 92 Local Government Act 2000 provides that where a local authority considers that a person has been adversely affected by its maladministration it may make payments or provide other benefits to that person. The Ombudsman's findings and recommendations have been accepted and the Council is therefore able to make the compensation detailed in this report. The Director of Legal and Governance under the Council's Constitution is authorised to approve payment in those circumstances.

4.4 Other Implications

4.4.1 None

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 No alternative options have been considered

6. REASONS FOR RECOMMENDATIONS

6.1 Sheffield has a statutory and moral duty to provide appropriate education provision for children with EHC Plans.

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