

LONDON BOROUGH OF RICHMOND UPON THAMES

REPORT TO: EDUCATION AND CHILDREN'S SERVICES COMMITTEE

DATE: 2 APRIL 2020

REPORT OF: DIRECTOR OF CHILDREN'S SERVICES

TITLE OF DECISION: PROGRESS WITH THE INDEPENDENT AUDIT RECOMMENDED BY THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN

WARDS: ALL WARDS

KEY DECISION? NO

IF YES, IN FORWARD PLAN? NO

For general release

1. MATTER FOR CONSIDERATION

- 1.1 This report provides an update on the progress that has been made in completing an independent audit of the support provided to children and young people with special educational needs and disabilities who have Education, Health and Care Plans, as recommended by the Local Government and Social Care Ombudsman.

2. RECOMMENDATIONS

- 2.1 **The Committee notes the progress that has been made in completing the independent audit of current Education, Health and Care Plans.**
- 2.1 **The Committee notes the emerging findings of the independent audit.**
- 2.1 **The Committee notes that a final report on the findings from the independent audit will be presented at its meeting in June 2020.**

3. DETAIL

3.1 Background

In October 2019, the Local Government and Social Care Ombudsman (LGSCO) considered and upheld three complaints from the parents of children and young people with special educational needs and disabilities (SEND), finding faults that have caused injustice.

The LGSCO made a number of recommendations to the Council, including that it: *“Complete an audit of all the children for whom the company appointed to run its SEND provision [Achieving for Children] is responsible, to identify if others have been affected in the same way. If it finds similar issues with delay, or children out*

of education, or inadequate record keeping, it should put in place action plans to address these.” The LGSCO also requires the Council to report back within six months on its findings and any actions that need to be taken. The deadline for this response to the LGSCO is 18 April 2020.

3.2 Audit scope

The specific recommendation made by the LGSCO is that the Council completes an audit of all those cases of children and young people with SEND for which it and its provider (Achieving for Children) is currently responsible. The purpose of the audit is to determine whether any other children and young people are affected by similar failings to those identified by the LGSCO in his investigation, principally: (a) delays in assessment and Education, Health and Care (EHC) planning; (b) gaps in provision meaning children are out of education; and (c) inadequate record-keeping. The purpose and scope of the audit was confirmed by the LGSCO in January 2020. The Council, through Achieving for Children, is directly responsible for children and young people aged between 0 and 25 with EHC Plans. This is currently 1,495 EHC Plans. It is not directly responsible for children who are supported at SEND Support level in schools and, as such, these children and young people have not been included in the scope of the audit.

It is important that the audit is focused on identifying any failings experienced by any of the 1,495 children and young people supported through EHC Plans at the current time. The audit will therefore examine all casework in these cases from 1 April 2018. If the individual casework audits identify that there are issues prior to April 2018 that are continuing to have current impact on children and young people, then earlier casework will also be examined in the audit. Parents and carers are able to identify to the auditors if there are such issues in their child’s case that should be examined.

Further details on the scope of the audit are included in a set of Frequently Asked Questions (FAQ) which have been produced for parents and carers – these are attached to this report as APPENDIX A.

3.3 Auditors

Five independent auditors have been employed to complete the audit. They are a group of professionals who are experienced in different aspects of SEND provision and the EHC planning process. They are: a lawyer with considerable SEND experience; a former Parent Partnership Officer; and three SEND casework managers who have worked in other local authorities. The auditors have not previously worked for Achieving for Children, Richmond Council or Kingston Council and are not currently involved in casework in any other local authority. The auditors work remotely and are supported by an administrator.

3.4 Audit methodology

The auditors use an electronic audit form to review all EHC Plans by examining each child’s or young person’s case record. The auditors also contact parents and carers by telephone where they have questions or concerns about the EHC Plan, provision, any aspect of case management, or the outcomes that are being achieved for the child or young person. Parents and carers are also able to submit

their comments or concerns to the auditors by email or in writing via an email and postal address independently hosted by RUILS, a local charity that supports parents and carers. The auditors escalate to the Director of Children's Services any cases where they consider that immediate action should be taken to ensure that a child's education, health and/or care needs are being met – see paragraph 3.6.

In addition, the South West London Audit Partnership (SWLAP) have been commissioned to complete an audit of EHC processes in relation to assessment, planning and annual reviews. This process audit will ensure there are adequate controls in place to ensure that assessments, plans and reviews are completed within statutory timeframes and follow the statutory framework and SEND Code of Practice. The audit will sample test to ensure that all processes work, are effective, comply with statutory requirements and accurately capture all the information required. The brief for the audit is attached to this report as APPENDIX B.

3.5 Progress

1,246 audits had been completed by 18 March 2020. It is expected that all 1,495 cases will have been audited by the time of this committee meeting on 2 April 2020. The process audit led by SWLAP is expected to be completed by 31 March 2020. This means that the findings of the audit are on track to be reported to the LGSCO by 18 April 2020. The LGSCO has been invited to meet with the Council to discuss the findings of the independent audit in addition to formally submitting the report. The final report of the audit and resulting action plan is due to be reported to this Committee at its meeting in June 2020.

3.6 Escalations

28 escalations had been made to the Director of Children's Services by 18 March 2020. 10 escalations relate to children and young people who are not currently in education, employment or training. 18 escalations relate to cases where there has been significant delay in updating and issuing an amended EHC Plan. Actions are being taken in each case to ensure that these children's and young people's education, health and care needs are being met.

3.7 Emerging findings

Three common themes have been identified by the auditors from the cases that have been reviewed to date. These are: (a) inconsistent recording-keeping and use of the electronic case management system; (b) actions identified in annual reviews do not consistently lead to an amended EHC Plan being issued in a timely manner; and (c) inconsistent communication with parents and carers. The most common issue relates to updating EHC Plans in a timely manner following an annual review and this will require a significant focus. Further details on these issues will be set out in the independent auditor's final report.

4 COMMENTS OF THE DIRECTOR OF RESOURCES ON THE FINANCIAL IMPLICATIONS

- 4.1 The Council is projecting a deficit of £15 million on High Needs funding by the end of the 2019/20 financial year and has been in regular dialogue with the Government on this issue. Costs relating to the independent audit are estimated to be £80,000 and will be met from within existing Council resources.

5. PROCUREMENT IMPLICATIONS

- 5.1 There are no procurement implications from this report.

6. COMMENTS OF THE SOUTH LONDON LEGAL PARTNERSHIP ON THE LEGAL IMPLICATIONS

- 6.1 The report by the LGSCO identifies fault by the Council, including failure to meet statutory time limits under the Children and Families Act 2014 and the SEN Code of Practice, and failure to provide services.
- 6.2 Under the Local Government Act 1974 Section 30, if the LGSCO decides to publish a report on an investigation, the local authority must make copies of the report available for inspection by the public for a period of three weeks at the council offices and must supply copies of the report on request (subject to the payment of any reasonable charge). The authority must advertise that the report is available, including by advertisement in newspapers and in such other ways as the authority considers appropriate.
- 6.3 Under Section 31 of the Local Government Act 1974, if the LGSCO reports that there has been maladministration of a failure in a service which it was the function of an authority to provide, or a failure to provide such a service, the report must be reported to Council or to a Committee with authority to consider it and the Council has a duty to consider the report and notify the LGSCO of the action which the Council has taken or proposes to take.

7. CONSULTATION AND ENGAGEMENT

- 7.1 All parents and carers of children and young people with an EHC Plan were written to on 24 January 2020. The letter, which was sent by post, explained the audit process and explained how parents and carers are able to contribute their views and experiences as part of the audit process. A second letter was sent to by parents and carers by post on 25 February 2020. Parents and carers can contribute their views confidentially to the auditors using an email address hosted by RUILS, a local charity supporting parents and carers. Parents and carers can also write to the auditors via the RUILS office in Teddington. The auditors will contact parents and carers by telephone to discuss any issues that have been identified with their child's Education, Health and Care Plan and their views will inform the audit.

Information on the independent audit is available on the Local Offer website for parents, carers and professionals supporting children with SEND. This includes the LGSCO report, the Council's response, the brief for the independent audit, and

some frequently asked questions (FAQ). The Local Offer also includes a weekly report on progress with the independent audit.

8. WIDER CORPORATE IMPLICATIONS

8.1 POLICY IMPLICATIONS
Achieving for Children have developed a strategy on SEND provision and a SEND Futures Plan which seek to address many of the recommendations in the Ombudsman's report; the strategy and SEND Futures Plan will be updated to include the outcomes and recommendations from the independent audit.
8.2 RISK CONSIDERATIONS
Achieving for Children has sought to mitigate the potential risks of poor practice by initiating an independent peer review led by the Local Government Association, and by completing an independent audit of all current Education, Health and Care Plans.
8.3 EQUALITY IMPACT CONSIDERATIONS
Actions to improve services for children with special educational needs and/or disabilities are included in the SEND Futures Plan.
8.4 ENVIRONMENTAL CONSIDERATIONS
There are no environmental implications arising from this report.

9. BACKGROUND INFORMATION:

The Local Offer website is at: https://kr.afcinfo.org.uk/local_offer

10. BACKGROUND PAPERS

Report of the Local Government and Social Care Ombudsman into an investigation into complaints against the London Borough of Richmond upon Thames (18 001 501, 18 003 307 and 18 013 211) – available at this link: <https://www.lgo.org.uk/decisions/education/special-educational-needs/18-013-211>

Report to the Council by the Lead Member for Children's Services on the Report of the Local Government and Social Care Ombudsman, 28 January 2020 – available at this link: <https://cabnet.richmond.gov.uk/ieListDocuments.aspx?CId=173&MId=4652>

Report to the Education and Children's Services Committee by the Director of Children's Services on the Report of the Local Government and Social Care Ombudsman, 13 February 2020 – available at this link: <https://cabnet.richmond.gov.uk/ieListDocuments.aspx?CId=800&MId=4690>

11. APPENDICES

Appendix A: LGSCO independent audit – frequently asked questions
Appendix B: LGSCO independent audit – audit brief

These appendices are available on the Local Offer website at:
<https://kr.afcinfo.org.uk/pages/local-offer/information-and-advice/local-government-and-social-care-ombudsman-lgsco-report-updates>

12. CONTACTS

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