

OMBUDSMAN REPORT - REPORT NO 07/C/03447

1. Executive Summary

This report outlines action taken since this matter was last before the Standards Committee on 30 June 2008. The Ombudsman had made a finding of maladministration and injustice against the Council regarding Mr H and his child S. The Committee had authorised the then Acting Monitoring Officer to respond to the Ombudsman stating that the Council would implement the recommendations contained in the Ombudsman's Report.

2.0. Background

2.1 The recommendations in the Ombudsman's report were that the Council should:

- Accept that it has no justifications for its claim not to be responsible for S
- Discuss and agree with the school and S's parents whether there is any additional provision that could be made to help S "catch up" on the year's schooling that he has missed;
- Reserve a sum of money equivalent to the cost of educating S at the school for a year in a fund until he has completed year 11 and then deploy the fund on any additional educational provision that the school and an educational psychologist recommend as being beneficial;
- Pay £1000 to Mr H in recognition of the anxiety, stress, time and trouble caused to him; and
- Make a payment of £655 to Mr H to reimburse what he paid for private tutoring for S during 2007.

2.2 The Council has implemented all these recommendations and the child S is making progress at the school. The Ombudsman and the Deputy Ombudsman had visited the Council on 17 March 2009 and met with the Chief Executive, the Director of Law, HR and Asset Management and the Director of Children's Services. The Ombudsman had expressed concerns about not having had sight of the previous report to Standards Committee before it went into the public domain and discussions took place on 17 March 2009 concerning the findings in the Ombudsman's Report and that the focus in the matter should be on the welfare of the child S.

2.3 The Interim Head of Legal and Member Services reviewed the matter in April 2009 and a copy to the Ombudsman of her letter dated 17 April 2009 is attached to this report as Appendix 1. The Ombudsman has indicated verbally that once the Standards Committee has had sight of the latest correspondence between the Council and the Ombudsman and that the Committee is informed in connection with the progress made by child S, that the Ombudsman is likely to consider that all outstanding issues have been resolved. It is intended that a

separate report will be brought before the Standards Committee concerning the role of the Standards Committee in connection with specific complaints to the Ombudsman.

3. Financial and Staffing Implications

These are set out in paragraphs 2.1 of this report.

4. Equal Opportunities Implications

S has special education needs. The Council has a statutory responsibility to assess the needs of children that reside within its area to assess any special educational needs and arrange provision to meet those needs.

5. Human Rights Implications

The names of the complainant, the children and other adults mentioned in the report are pseudonyms as under the Local Government Act 1974, the Ombudsman shall not use the real names of people in the report nor publish information likely to identify them and the family's right to privacy is respected. There has been widespread media reporting of the Ombudsman's findings but the family have not been identified.

6. Local Agenda 21 Implications

None

7. Community Safety Implications

None

8. Planning Implications

None

9. Anti-poverty implications

9.1 None

10. Local Member Support Implications

None

11. Social Inclusion implications

Authorities need to have regard to guidance on the statutory framework for inclusion of children with special educational needs in mainstream schools

12. Background Papers

12.1 The Ombudsman's report was used in preparing this report

13. Recommendation

- 13.1 That the Committee note that the Council has implemented the recommendations made in the Ombudsman's Report issued on 10 April 2008, having accepted the findings of the Ombudsman and also note the progress being made by child S at the school.

Bill Norman

Director of Law, HR and Asset Management

***Director of Law, HR and
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to Anne Seex,
Local Government Ombudsman,
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date 17 April 2009

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Dear Ms Seex,

COMPLAINT BY MR H

I refer to your meeting at the Council on 17 March 2009 in connection with the above matter. I have recently joined the Council as Interim Head of Legal and Member Services and have reviewed the matter at the request of the Director of Law, HR and Asset Management. I have a background in education law, having previously acted as the principal legal adviser on education matters at a unitary authority.

The Council was under a statutory duty to secure the provision specified in the SENDIST order and focus on the welfare and educational needs of S. Having considered the relevant case law which you helpfully supplied with your letter of 23 April 2008. I agree that a local authority may only challenge an Ombudsman's findings by Judicial Review and confirm that the Council accepts the findings in your Report dated 10 April 2008. There were procedural steps which the Council could have taken to clarify issues of funding between Flintshire and Wirral. I also confirm that the Council has implemented fully the recommendations in your report.

I refer to the Report, which was considered by the Standards Committee on 30 June 2008. The Council agrees that the Report should have been shared with yourself, before being put into the public domain. Consideration is also to be given as to whether the Standards Committee is the appropriate committee to receive reports on the outcome of complaints to the Local Government Ombudsman.

I hope that this letter resolves all outstanding issues and that you do not consider it will be necessary to issue a further report.

Yours sincerely,

Rosemary Lyon
Interim Head of Legal and Member Services