

Local Government and Social Care Ombudsman report on the decision relating to Summer Born school admission

Date: 22nd September 2021

Report of: Director of Children and Families

Report to: Executive Board

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- This report responds to the Local Government and Social Care Ombudsman's (LGSO) report finding fault which caused injustice in the way in which an application to be admitted outside of the normal admission round for a summer born child was processed. Following the publication of Nick Gibb, Schools Minister's, open letter in July 2015 regarding all parents of summer born children having the right to enter Reception class once they had turned five, admission authorities have faced difficulties in managing such applications within the prescribed regulations.
- Although six years have passed since the letter, including the publication of a new statutory School Admission Code in 2021, the Code has not been amended to reflect the policy statement, and still requires that each case be considered in the best interests of the child. The Department for Education has published two non-statutory guidance documents in that time, seeking to explain what they expect admission authorities to do, however the guidance does not fully align with the School Admissions Code.
- The Council accepts that the letter to the parent was not sufficiently clear, and apologises to the parent for the time and trouble in bringing their complaint. The parent's request for their child to be admitted out of the normal age range was initially refused in line with the School Admissions Code. They chose, as is their right, to wait and apply again the following year. The new application was considered, again in the best interests of the child, and subsequently granted.
- Requests to be admitted outside of the normal age range for summer born children are managed in line with the city's aspiration to be the best council, the best city in which to grow up and a child friendly city. The consideration of each case is in the best interests of the child at the time of the decision, allowing parents to make informed choices.
- Advising parents that a school can meet the needs of their child, when facing an important decision about when their child will start school contributes towards the achievement of the

Child Friendly City aim of ‘improving educational attainment and closing achievement gaps for children and young people vulnerable to poor learning outcomes’.

- A good quality school place also contributes towards delivery of targets within the Children and Young People’s Plan such as our obsession to improve achievement, attainment and attendance at school.

Recommendations

- a) Executive Board is asked to note the LGSO’s report and the recommendations for improvement
- b) Executive Board is asked to note that the responsible officer for this matter is the Head of Learning Systems

Why is the proposal being put forward?

- 1 The purpose of this report is to ensure that Executive Board is informed of the outcomes of a recent Ombudsman report and to provide assurance to the Board that the Council has taken effective action in response.
- 2 Section 31(2) of the Local Government Act 1974 requires that where the Ombudsman issues a report with a finding of maladministration and injustice, the authority will consider the report. This requirement is fulfilled by reporting to the Executive Board.
- 3 The Act requires that Ombudsman’s findings must also be advertised in two newspapers and copies of the report made available for public inspection. These notices were placed in the Yorkshire Post and the Yorkshire Evening Post on the 27 July 2021. The report was available to the public by emailing the children and families customer relations service at complaints.children@leeds.gov.uk.
- 4 Miss M submitted a formal complaint to the Council’s Children and Families service regarding the way in which her request for her child to be admitted outside of the normal age group was handled in summer 2020. The complaint was considered at two formal stages and was not upheld. At this point the complainant then asked the Local Government and Social Care Ombudsman to consider their case.
- 5 The substance of Miss M’s complaint is that the council did not comply with the non-statutory 2014 DfE guidance on the admission of summer born children.
- 6 The relevant statutory School Admissions Code came into force on 19th December 2014. The Code sets out that the parent of a ‘summer born’ child has the right to defer their start to full time education until the term following their fifth birthday. In addition, that parent may request that their child be ‘admitted out of their normal age group – to reception rather than year 1. The Admission Authorities must make decisions on the basis of the circumstances of each case and in the best interests of the child concerned.’ Non-statutory advice on the admission of summer born children was also issued on the same date, stating that the advice would be reviewed within 3 years of publication.
- 7 On 8th September 2015 Nick Gibb MP, Minister of State for Schools, issued an open letter stating the following: *“We have, therefore, decided that it is necessary to amend the School Admissions Code further to ensure that summer born children can be admitted to the reception class at the age of five if it is in line with their parents’ wishes, and to ensure that*

those children are able to remain with that cohort as they progress through school, including through to secondary school. We will conduct a full public consultation in due course; and subject to Parliamentary approval will introduce these further changes to ensure that no child is forced to start school before they are ready.”

- 8 On 26th June 2020 the DfE issued a statement about consultation on an updated School Admissions Code explaining that the amendment regarding summer born children would not be included: *“We are unable to make the summer born change at the same time, because a provision to enable children to remain in a particular cohort goes beyond the remit of the code and therefore requires primary legislation. We remain committed to making these changes in due course”.*
- 9 On 24th September 2020 the non-statutory advice on the Admission of Summer Born children was updated.
- 10 The decision about Miss M’s request was taken in line with the statutory requirement of the School Admission’s Code to make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. The decision making process, however, did not comply with a specific point within the non-statutory advice on the admission of summer born children issued by the DfE.
- 11 The Advice states that *‘The parents of summer born children must be able to make a decision about whether their child is ready to go to school before compulsory school age confident that, if they decide not to send them to school until age five, the decision about the year group they should be admitted to at that point will be made in the child’s best interests’.*
- 12 The issue that has arisen, leading to the LGSO report, is a result of the specific wording in the non-statutory Advice which follows this and states: *“This will require the admission authority to take account of the child’s individual needs and abilities and to consider whether these can best be met in reception or year one. It will also involve taking account of the potential impact on the child of being admitted to year one without first having completed the reception year”.*
- 13 The process followed in Leeds is that if parents of a summer born child apply in the normal admission round, for the normal age group, they may also submit a request to defer their child’s entry. These requests are considered by a panel and parents are given the outcome about whether it is considered that the child’s best interests are met by entering reception at the normal time, or deferring a year. Parents’ are then free to choose when they want their child to start school.
- 14 Where a parent has been informed that the panel believe the best interests of the child are met by starting school in the normal age range, they may still choose to wait, as in this case. They are also able to apply again the following year, and again to request that their child be admitted out of the normal age range. A fresh decision will be made by the panel based on the consideration of the case and the best interests of the child. In this case the panel went on to agree that the child should be admitted outside of the normal age range, and into Reception rather than year 1 in 2021.
- 15 When a parent has already made their decision to defer, and then applies in the normal admission round, and requests that their child be admitted outside the normal age range, Admission Authorities are able to make the decision that both the Code and the Advice

require. They are able to decide, *at that point*, whether the child best interests can be met by starting in Reception or Year 1.

- 16 The issue arising from the Advice is that, in part, it sets out the potential for an admission authority to state that it can meet the needs of a summer born child starting in the normal age range. Leeds schools are very inclusive and regularly meet a wide variety of needs for the children they admit, and can serve the best interests of children starting in the normal age range. However, the Advice sets out in another part that the decision that must be taken is whether a child's needs who defers entry, are best met in Reception or Year 1. This potentially requires a decision to be made that does not reflect the best interests of the child.
- 17 The decision, that is the subject of the LGSO report, was made considering the case and the best interests of the child, however it was not a decision about whether the child should enter Reception or year 1 the following year, which is where fault has been found. The Admission Authority can disregard the Advice if they have good reason to do so. Both panel decisions were made in the best interests of the child at that time. However, our initial letter to the parent was not sufficiently clear and referred to when the child 'should' start school. This is rightly a decision for the parent to make and we apologise to Miss M, and for the anxiety and uncertainty this lack of clarity has caused.
- 18 The LGSO report requires that the decision be made again in line with the Code and the Advice, and conveyed to the parent. This had already taken place prior to the report being published, and the child will be starting school in Reception in September 2021.
- 19 Further recommendations to review all recent and pending decisions in the last 12 months has been undertaken to ensure they have been made in line with the Code and the Advice. Evidence will be reported to the LGSO.
- 20 Training has been provided to panel members and council officers on the new 'Advice for Summer Born' that was released in September 2020.

What impact will this proposal have?

Wards Affected: City wide

Have ward members been consulted? Yes No

- 21 There are no equality and diversity implications of this report. The recommendations of the LGSO will ensure that parents can continue to request for their child to be admitted to a cohort outside their age group, and have that request considered by the Admission Authority in line with the School Admissions Code.

What consultation and engagement has taken place?

- 22 There is no consultation required as a consequence of this report.

What are the resource implications?

- 23 The LGSCO report recommended a payment to the parent of £150 for the time and trouble in bringing her complaint.

What are the legal implications?

- 24 The Board is required to formally review the outcomes of the Ombudsman's report, in line with the statutory requirements of Section 31(2) of the Local Government Act 1974.
- 25 This report is subject to call in.

What are the key risks and how are they being managed?

- 26 Ensuring that policies and practice are strengthened is important to meet statutory requirements and also as cases such as these could contribute to key corporate risks including those relating to inspection and safeguarding failure.

Does this proposal support the council's 3 Key Pillars?

- Inclusive Growth Health and Wellbeing Climate Emergency

- 27 Effectively resolving the issues raised by this case are important to the Best Council priority to make Leeds the Best City for Children and Young People, and the priorities of the Three A's Strategy.

Options, timescales and measuring success

a) What other options were considered?

- 28 The Council has fully accepted the recommendations for remedy that have been put forward by the Ombudsman. The Children and Family Service regrets the anxiety and uncertainty for Miss M and is committed to ensuring this case is used properly for learning and improvement.
- 29 The service has now ensured that a fresh decision has been made in the best interests of Miss M's child.
- 30 New advice has been released by the DfE and panel members and officers trained accordingly.
- 31 Outcomes letters to parents have been amended to provide the clarity.

b) How will success be measured?

- 32 Future requests will continue to be considered in line with the published Statutory School Admissions Code (2021) and non-statutory 2020 guidance.

c) What is the timetable for implementation?

- 33 See attached action plan.

Appendices

- 34 LGSO Report
- 35 LCC Action Plan in response to the findings.

Background papers

- 36 None