

**CHILDREN'S SERVICES SCRUTINY PANEL
EDUCATION OTHERWISE
LOCAL GOVERNMENT OMBUDSMAN FOCUS REPORT (JULY 2022)**

1. BACKGROUND

- 1.1 Local authorities have a statutory duty to provide a full time education for every child in their area. For most children, this duty is fulfilled with a place at school. For some children, their parents opt to electively educate their children at home and this is a growing trend nationally as well as in Tameside. Some children are unable to attend school on a full time basis and this can be for a number of reasons. For example, if a child is ill, has a long term medical condition or high levels of anxiety. In these cases, the local authority has a duty to make alternative arrangements to provide a suitable education. Decisions on these cases must be evidence based and this report outlines the way that Tameside Council meets its statutory duty for these children.

2. LEGAL BACKGROUND

- 2.1 Just like local authorities have a duty to ensure that children have a full time education, parents also have a duty to ensure their children receive a suitable, full time education as set out in the Education Act 1996, section 7.
- 2.2 However, councils must "*make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.*" (Education Act 1996, section 19(1))
- 2.3 Suitable education means efficient education suitable to a child's age, ability and aptitude and to any special educational needs he may have. (Education Act 1996, section 19(6))
- 2.4 The education provided by the council must be full-time unless the council determines that full-time education would not be in the child's best interests for reasons of the child's physical or mental health. (Education Act 1996, section 3A and 3AA).
- 2.5 Full-time education ranges from 21 hours per week at Key Stage 1 to 25 hours a week at Key Stage 4. If councils provide one-to-one tuition, the hours of face-to-face provision could be fewer as the provision is more concentrated.
- 2.6 If a child is unable to attend school because of illness, the council must make alternative arrangements once the child has been absent for 15 days, either consecutively or cumulatively. The council must consider the individual circumstances of each child and take account of any medical evidence or advice when deciding what arrangements to make.
- 2.7 If a child has been permanently excluded from school, the council must arrange alternative education from the sixth school day following the exclusion, although it may start sooner.
- 2.8 "Otherwise" is a broad category which covers circumstances other than illness or exclusion in which it is not reasonably possible for a child to take advantage of any existing suitable schooling.
- 2.9 In all cases, councils must consider the individual circumstances of each particular child and be able to demonstrate how they made their decisions. They must take account of all available evidence, and record the reasons for their decisions. They may need to make decisions in cases where they do not have all the evidence they would like.

3 LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN FOCUS REPORT

- 3.1 In July 2022, the Local Government and Social Care Ombudsman (LGSCO) published a focus report entitled 'Out of school, out of sight – ensuring children out of school get a good education' (**Appendix 1**). This report aimed to highlight learning from complaints to the Ombudsman. The report highlighted five common issues and learning points:
- Taking responsibility for ensuring pupils receive suitable full time education
 - Making decisions based on the evidence available
 - Providing suitable full time education
 - Reviewing plans and amending the approach
 - Restricting alternative provision: the meaning of 'otherwise'
- 3.2 The LGSCO report went on to identify seven recommendations for councils in terms of their statutory responsibilities:
1. Consider the individual circumstances of each case and be aware that the council may need to act whatever the reason for absence (except for the minor issues schools deal with on a day-to-day basis) – and even when a child is on a school roll.
 2. Consult all the professionals involved in a child's education and welfare, and take account of the evidence when making decisions.
 3. Choose (based on all the evidence) whether to require attendance at school or provide the child with suitable alternative education.
 4. Keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases.
 5. Work with parents and schools to draw up plans to reintegrate children to mainstream education as soon as possible, reviewing and amending plans as necessary.
 6. Put the chosen action into practice without delay to ensure the child is back in education as soon as possible.
 7. Where councils arrange for schools or other bodies to carry out their functions on their behalf, the council remains responsible. Therefore, retain oversight and control to ensure your duties are properly fulfilled.
- 3.3 The LGSCO report also provided a number of key questions for Scrutiny panels to consider asking to ensure that services are meeting their statutory functions and those questions together with answers are attached as **Appendix 2** to this report.

4. LEARNING FROM THE REPORT FOR TAMESIDE

- 4.1 As can be seen from Appendix 2, the Education Service has well developed and understood processes for many children who are not in school on a full time basis. Attached are three case studies that highlight how the service currently works with some of our young people:
- Case study one (Appendix 3) is where we have supported a young person with cancer
 - Case study two (Appendix 4) is where we have supported a cared for child with alternative provision
 - Case study three (Appendix 5) is where we have supported a young person with special educational needs
- 4.2 Things the Education Services does well include:
- Identify when children are not receiving a suitable education at home and quickly implement remedial action for example school attendance orders
 - Ensuring the welfare of children educated at home is a priority
 - Effective identification of children who are or have been known to Children's Social Care and who are being home educated.
 - Good partnership with Children's Social Care to ensure the needs of vulnerable children being educated at home are a priority including colleagues attending core groups and strategy meetings for individual children

- Good multi agency working to support children educated at home including with health colleagues and Positive Steps
- Creating good networking opportunities for parents who are choosing to home educate their children for example coffee mornings
- Good communication with all families who home educate including regular newsletters
- Effective and well understood children missing education procedures and good referral rates from schools
- Effective tracking and identification of children missing from education
- Alternative provision for children who are excluded is commissioned through Tameside Pupil Referral Service who recently had a 'Good' Ofsted judgement
- Effective system for schools to refer children with medical conditions who are unable to attend school on a full time basis or for a period of time for example whilst receiving chemotherapy
- Effective multi agency case management panel to advise on an individual education plan to meet the needs of children with medical conditions that is agreed with families and schools
- Good support for the individual learning needs of children with medical conditions through appropriate provision for example home tuition or alternative provision
- Effective process to reintegrate children with medical needs back into school after period of absence from school
- Effective use of home tuition and /or alternative provision to support cared for children who are moving schools following placement breakdowns
- Appropriate use of education otherwise than at school for some children with EHCPs
- Regular register audits with schools to identify trends in non attendance and provide bespoke advice on addressing issues
- Training programme for schools on thematic attendance issues based on collated feedback from systematic register audits

4.3 Things the service need to develop further include:

- Develop register for children not in school
- Investigate the possibility of developing an exam centre for children who are home educated
- Better tracking of children who are allocated a school at the normal point of entry (Reception and Year 7) and then fail to start school
- More timely referral and tracking process for pupils who are absent from school for a period of 15 days or more due to reasons other than medical conditions
- Support to ALL schools to monitor and challenge pupil absence
- More timely identification of and support for children with SEN who are not attending school due to their needs not being met through the EHCP process or whilst on the SEN assessment pathway
- More effective use of data to inform process improvement and ensure resources are effectively deployed to support children not in school
- Develop more consistent recording of decisions on provision for individual children following discussion at the multi agency case management panel
- Better reintegration of pupils back into school following a period of in patient Tier 4 CAMHS provision
- Developing a borough wide, shared attendance strategy to ensure a consistent understanding of what good attendance looks like
- Develop consistent information for parents who are worried about their child's attendance on the website
- Develop a consistent recording process across Education Services to ensure children not in school are appropriately recorded
- Ensure individual EHCPs reflect actual provision for example, part time or alternative provision and are reviewed annually

5. FUTURE GUIDANCE

Schools Bill 2022

- 5.1 The Department for Education has recently published its Schools Bill 2022 [School attendance - Schools Bill Factsheet \(publishing.service.gov.uk\)](#) and sections of this bill will assist the Council in meeting the needs of children not in school. New school attendance guidance [Working together to improve school attendance - GOV.UK \(www.gov.uk\)](#) will help the Council to identify and support children not attending school regularly.
- 5.2 **Schools attendance: general duties on local authorities** The guidance that local authorities will be required to have regard to will include minimum components of attendance support that local authorities are expected to deliver to schools in their area, regardless of school type and including independent schools, for example Trinity School in Stalybridge.
- 5.3 The local authority will be required to establish a School Attendance Support Team to support schools to improve attendance. The requirements include a named contact within the Council for attendance and termly meetings all with schools to identify strategies and signpost on to support for children and families. Children who are severely absent from school (less than 50% attendance) will be discussed individually and a multi agency plan devised to support improved attendance.
- 5.4 It will also make clear that legal intervention, including fixed penalty notices, should only be used where support has not worked, has not been engaged with or is not appropriate. This will help to ensure that schools and families across England receive a consistent standard of support.
- 5.5 **School attendance policies** This requires schools to publish and publicise an attendance policy covering specified components will help set clear attendance expectations for staff, pupils and parents. Further, it will encourage schools to think strategically about their attendance processes and efforts to improve attendance. Based on the existing effective attendance practice of some schools, the guidance will provide further detail on implementing these components. It will also cover how proprietors should ensure they meet their obligations, for example on accurately completing attendance and admission registers which is crucial to enable schools and local authorities to quickly identify pupils who require attendance support and put it in place before absence becomes deep-rooted.
- 5.6 **Guidance (non-statutory and statutory)** Whilst the intention is that the legislation will not take effect until 1 September 2023, the related guidance will be issued as non-statutory guidance for schools and local authorities to use in academic year 2022/23, allowing them to be ready for the legislative requirement to have regard to statutory guidance in 2023/24.
- 5.7 In response to a 2019 consultation on children not in school, the recommendations have been included in the Schools Bill [Children not in School - Schools Bill Factsheet \(publishing.service.gov.uk\)](#).
- 5.8 Should the Bill become law, there are several provisions that will help the Council to improve provision for children not in school. These include
- local authorities to maintain registers of Children Not in School
 - parents to provide necessary information to local authorities for inclusion on their registers; local authorities will be required to start School Attendance Order proceedings should parents not comply with providing this information
 - providers of out-of-school education to provide information to the local authority, on request, in cases where they are providing education to an eligible child above a prescribed threshold (which will likely represent a substantial proportion of a child's education), or where the local authority reasonably believes them to be – this includes

local authorities being able to impose a civil penalty should providers not comply with such a request

- local authorities to provide support to registered home-educating families where it is requested
- local authorities to share information from their registers

6. CONCLUSION

- 6.1 Education Services have appropriate provision in place for many children who are unable to attend school for a number of reasons. There is still some work to do to ensure that all children not in school are identified and supported into education be that alternative provision; being educated at home or supported to return back to school.

BACKGROUND INFORMATION

- Pupil lives at home with both parents
- Mother currently abroad with sibling –no expected date of return
- Pupil subject to child in need plan
- Year 2 student

Medical condition

- Pupil has 2 types of cancer and has undergone a bone marrow transplant
- Required to be absent from school as a result of low immunity

Concerns

- Social worker recommended that pupil seen daily by professional
- English is not family's first language
- Father has struggled to support pupil academically

Panel & Reviews

- LA were informed about pupil from hospital
- First panel convened 22/09/2021
- Review 17/11/2021
- Review 24/01/2022

Blended Education provision

- School provided differentiated work programme
- School to carry out home visits to do reading and other assessments (1 hour per fortnight)
- Staff from Pupil Support Service (PSS) to do home tuition, delivering the work set by school (6.5 hours per week)
- School provided access to online learning programmes which pupil can access in her own time
- Music service provided keyboard tuition
- School considered creating opportunities for pupil to have virtual interaction with peers but this was not possible due to Father's unpredictable behaviour. This was replaced by school finding creative ways for pupil to continue to feel part of the school ie: staff make a recording of pupil which was included in school nativity play. School held a "special hat day" to link with pupil losing her hair and photos of all pupils were shared with pupil

Outcome

- Advice from hospital that pupil was safe to return to school
- Clear plan put in place to reintegrate pupil back into school at appropriate time
- Case closed to medical panel
- Child in need plan continued

Case Study – Cared for child alternative provision**Context**

- Student A is a year 3 child who is cared for to Thameside Local Authority on a Full Care Order.
- A resides in an out of borough residential setting.
- A is on roll at a mainstream primary school. A was taken onto their roll in Sept 2021.
- A has an EHCP with a primary need of SEMH. A's EHCP is maintained by the residing authority and funded by Thameside.

Strengths

- A settled well into school and was well supported.
- School were supported in the early days by a Thameside EP who provided advice and support through transition.

Concerns

- A's presentation in school deteriorated and she was at risk of exclusion.
- A was unable to access the mainstream classroom despite considerable support offered by school.
- School, carers and social worker were concerned that school were unable to meet her needs.
- The impact of additional transitions for A was a worry if there was a need to consider specialist provision.

Chronology

- March 2022 – the Head teacher at A's school contacted Thameside Virtual School for advice and support as A's presentation was putting her at risk of exclusion.
- School had put in extensive 1:1 support however it was not safe for A to be in the mainstream classroom. A was working from home with input from school while professionals met to plan suitable provision.
- Thameside Virtual School contacted the authority responsible for maintaining A's EHCP and asked for advice around suitable provision in the area.
- Professionals met to plan a phased reintegration for A, following time working at home to ensure A continued to have contact and did not feel rejected by school.
- Reintegration plan was monitored weekly initially and a clear plan to increase time in school was formulated. School worked closely with carers, social care and Virtual School to plan a blended learning offer of home learning, 1:1 time in school and time within the classroom.
- Thameside EP contacted A's school to arrange further consultations and work with A to support a reintegration into school.
- Meanwhile an emergency EHCP review was scheduled.
- April 2022 – EHCP review was held.
- School and other professionals – OOB SEN, Social Care and Virtual School worked together to devise a blended curriculum for A including, specialist teaching, equine therapy, mainstream class provision and nurture sessions.
- This provision aimed to maximise opportunities for success, known strengths and opportunities to access core curriculum areas, as well as provision aimed at supporting SEMH needs.
- Thameside SEN have been liaised with and have supported to QA and agree funding.

Outcome

- A had a successful end to the year and their EHCP has been amended to describe specialist with bespoke curriculum offer.
- A engaged with the offer and attendance and engagement increased.
- Professionals from both boroughs continue to work together to ensure A has suitable provision for the next academic year, which meets need.

Case Study – Young person with an Education, Health and Care Plan

<p>Context</p> <ul style="list-style-type: none"> • Student A is a year 11 student enrolled at Tameside Local Authority Mainstream Secondary School • A is on roll at a mainstream secondary school. A was taken onto their roll in September 2017 • Student A has not attended school full time since the second coronavirus lockdown January – March 2021. It is important to add that she was also struggling with her attendance before the lockdown periods. 	
<p>Strengths</p> <ul style="list-style-type: none"> • Student A is currently known to CAMHS and is on the Multiagency Autism Assessment Team (MAAT) pathway due to her social communication needs. • She is a really good reader. • A is very good at expressing herself and has a good vocabulary. • She is very good with animals and enjoys looking after her dogs at home. • Student A knows that she would like to work in the area of criminology when she is older. • A has recently worked really hard towards her English and maths GCSEs. 	<p>Concerns</p> <ul style="list-style-type: none"> • Student A experiences special educational needs primarily within the area of Communication and Interaction due to social communication difficulties – however at present her presenting needs are in the area of Social, Emotional and Mental Health • A also has needs in the area of Sensory and Physical as she can find certain environments difficult to manage. She then has needs in the area of Cognition and Learning Student A displays high levels of anxiety and panic attacks. She is also supported by psychiatry and takes medication to support her sleep.
<p>Chronology</p> <ul style="list-style-type: none"> • A parental request for statutory assessment was issued in February 2022 • June 2022 – the LA was notified of a registered appeal with the First Tier Tribunal • June 2022 The LA conceded to the appeal agreeing to proceed with a statutory assessment • August 2022, statutory assessment of student A's Education, Health and Care Needs has been completed and a decision issued to award an Education, Health and Care Plan (EHCP) 	
<p>Outcome</p> <ul style="list-style-type: none"> • A statutory assessment of student A's Education, Health and Care Needs has been completed. Student A's needs have been fully identified, to date, through this process and whilst neurodevelopmental assessments are concluded. • An Education, Health and Care Plan is to be issued outlining student A's special educational needs and the provision that must now be secured to enable the student with every opportunity experience success in all aspects of learning and developmental, which is sensitive to her current needs and which will enable A to make progress. • In the process the LA has secured the offer of a tutor, which has worked well and the EPS has supported the school with a reintegration plan. This initially began with 1 hour per week, outside of school hours, and whilst the school environment was quitter. This is due to be extended to 3 hours at the beginning of the autumn term. Alongside this student A will access a bespoke educational offer alongside access to AP in line with her specific interest and which aim to promote engagement. 	