

Section B: Education

B1: Admissions

Admissions criteria not properly applied – child wrongly denied place – defects in appeal committee procedure – lack of training for members – inadequate records

1. Mr and Mrs Jackson's son, Tom, attended an infant school which had traditionally been the feeder school to Junior School X. When Tom was due to transfer to junior school Mr and Mrs Jackson wanted him to go to Junior School X and applied for him to do so. Their application was unsuccessful and so was their appeal.

whom the offers of places should be made, the governors did not give preference to those children. The Ombudsman found therefore that the governors did not properly apply the stated admissions policy in making the offers. He also found that, if the criteria had been properly applied, Tom would have been offered a place.

General

2. The Ombudsman commented:

"All of us are indebted to the thousands of people who serve as governors of schools or members of admission appeal committees. They give their time and effort for no financial reward. They have to make difficult and sometimes unpopular decisions. Naturally, parents attach great importance to their preferences about the schools to which they wish their children to be admitted. In considering parents' admission applications, governors and appeal committees have to apply law and guidance which is complex."

3. The Ombudsman was in no doubt that, in this case, the governors concerned, the headteacher, the members of the appeal committee and the clerk acted in good faith and that they did what they honestly believed to be right. However, there were serious defects in the way in which the governors and the appeal committee acted.

Admissions criteria

4. The published admissions criteria stated that preference would be given to children from the traditional local feeder school. But, in deciding to

Appeal committee

5. The Ombudsman found that two members of the appeal committee did not appear to be familiar with the contents of the *Code of practice on admission appeals*, and only one member had received training. The Ombudsman commented:

"In my opinion, it is the responsibility of governors to ensure that members of appeal committees are given sufficient training to understand the Code and the need to have regard to it."

6. After the appeal hearings, the appeal committee met the headteacher privately and asked if she would admit additional children. The headteacher agreed she would admit four more children and the appeal committee then decided to allow four appeals. The Ombudsman pointed out that the function of appeal committees was to make decisions. It was improper for the appeal committee to ask the headteacher if she would admit more children; and it was also improper for this discussion to take place in the absence of the appellants.
7. The clerk was not present after the hearings to advise the appeal committee and to record the committee's decisions and the reasons

for them. Neither appeal committee members nor the clerk retained manuscript notes of what was said at the hearings. A document described as the minutes of the hearing contained no record of whether the appeal committee considered that prejudice to efficient education or the efficient use of resources would arise if any appeal was allowed. But, the Ombudsman said, reaching a decision on that question was a crucial part of the process and the committee's decision should have been properly recorded.

Outcome

8. Mr and Mrs Jackson were caused injustice. They were denied a place for Tom at the school of their preference and it should not have been necessary for them to make an appeal or a complaint to the Ombudsman.
9. Tom had transferred to an alternative school and Mr and Mrs Jackson did not wish to move him. The Ombudsman recommended that the governors should pay Mr and Mrs Jackson £500.

(Report 99/A/1972)

B2: Admissions

Appeal – guidance for parents

1. Mrs X complained about the appeal against the refusal of a place for her daughter in a secondary school. The governing body of the school was the admissions authority.

Guidance for parents

2. Mrs X drew the Ombudsman's attention to one of the statements about appeals which was sent to parents by the admissions authority explaining the arrangements. The reference was:

"... appeals can only succeed in the most exceptional of circumstances. Situations which are equally likely to apply to a number of unsuccessful applicants, for example, have very little chance at appeal."

Inappropriate statement

3. The Ombudsman considered that this statement could be taken as intended – or that the practical outcome could be:
 - to dissuade parents from appealing; or
 - to persuade parents to cut down the grounds for their appeal.
4. The Ombudsman accepted that in Mrs X's case it did have the second effect. The Ombudsman agreed that the statement was inappropriate and the result was that the appeal was unfair.
5. The governing body agreed to arrange for Mrs X to have a fresh appeal. The Ombudsman accepted that this was a fair and satisfactory way to settle the complaint and emphasised to Mrs X that there was no constraint on the points she could make in connection with her appeal.

(Local settlement 00/A/418)

B3: Admissions

Appeal upheld – appeal panel wrongly attached a condition

1. Mr and Mrs Adelaide complained that when a school admission appeal panel upheld their appeal for their daughter Kathy to attend a secondary school, it made the decision conditional upon provision of evidence that they had exchanged contracts for a home in the school's catchment area.
6. The council refused to admit Kathy to the school unless Mr and Mrs Adelaide provided evidence of the proposed house move. The arrangements for that particular property fell through.

What happened

2. Mr and Mrs Adelaide lived in Albury. Kathy attended a secondary school there. She became the victim of bullying. On one occasion she needed hospital treatment as a result.
3. Mr and Mrs Adelaide applied for a place for Kathy in Broken Hill School, near Rockhampton where they owned a caravan and spent the summer months. The application for a place was refused.
4. Mr and Mrs Adelaide appealed. They explained that their reasons for wanting a place in Broken Hill School were the severe bullying and the fact that they were in the process of moving to a property in Broken Hill.
5. Following the appeal, Mr and Mrs Adelaide received a letter notifying them that their appeal was successful. The letter said that the panel agreed that the personal circumstances of the case justified a place being made available for Kathy. But the letter also said that the availability of the place was subject to evidence of an exchange of contracts for the property in Broken Hill.

Nature of decision

7. The Ombudsman was in no doubt that the appeal panel attached a condition to its decision. He considered whether the panel had the power to do so.
8. The *Code of practice on admission appeals* issued by Parliament was clear that panels should seek corroborative evidence where necessary and make their decisions on the strength of it. There was no provision to make a decision conditional on the provision of evidence the panel did not see. The council could not provide any evidence to support the view that an appeal panel had power to attach a condition. The Department for Education and Employment, which was consulted both by the Ombudsman and by the council, said that panels did not have such a power.
9. The Ombudsman concluded that the appeal panel exceeded its powers in attaching a condition to its decision. That was maladministration.

Outcome

10. The maladministration caused injustice to Mr and Mrs Adelaide, who felt that the panel's decision was fatally flawed, and who were put to considerable time and trouble in trying to persuade the council they were right.

11. The Ombudsman agreed with the council's suggestion that the appeal panel's decision should be treated as void and that the appeal should be reheard by a new panel.
12. The Ombudsman considered the council should recognise Mr and Mrs Adelaide's time and trouble in pursuing the matter and recommended a payment of £250.

13. The Ombudsman commented:

"This complaint has raised an issue of some public interest in exposing that it is clearly wrong for appeal panels to attach conditions to their decisions."

(Report 99/B/4658)

B4: Admissions

Burden of proof – ambiguity in evidence – conflict of roles

1. The parents of 10 children complained that an appeal panel did not properly consider their appeals for admission of their children to two grammar schools.
2. The Ombudsman expressed concern about a number of points.

Burden of proof

3. In making its judgements the panel used the standard of 'beyond all reasonable doubt'. That was the burden of proof appropriate to criminal proceedings and was not appropriate for admission appeals. The correct standard to apply was 'the balance of probabilities'.
4. The use of the wrong test of proof was maladministration, as was the council's failure to guide the panel. Parents were put at a disadvantage because they were obliged to make a much stronger case to be successful on appeal than if the panel had used the correct test.

Ability assessment

5. In considering appeals the panel took account of the opinion of the headteacher of the child's primary school about the child's suitability for grammar school education. On the assessment form the headteacher could tick one of five boxes to indicate that the pupil could be expected to find work at grammar school very easy/easy/appropriate/difficult/too difficult.
6. In the case of Mrs Carlton's son, the headteacher had placed a tick to the right of the 'appropriate' box. Mrs Carlton went to the appeal thinking that the headteacher supported her son's suitability for a grammar school place.
7. At the appeal hearing the presenting officer explained that if a headteacher was uncertain he or she would place a tick between boxes. In this case the tick was placed between 'appropriate' and 'difficult'. The tick was placed just to the right of the 'appropriate' box.

8. The Ombudsman accepted that Mrs Carlton had not understood the relevance of the position of the headteacher's tick in the report on her son. The explanation given during the appeal was new information which might have affected her ability to argue her child's case.
9. The Ombudsman said that an adjournment at this stage during the appeal to seek clarification of the headteacher's intentions would have given everyone the benefit of being sure what the headteacher meant. It would also have given Mrs Carlton time to compose her thoughts, and perhaps to alter the thrust of her case.
10. It was not enough that relevant information was ascertained after the hearing of the appeal and conveyed to the panel members in the absence of the parents and the presenting officer.
11. The Ombudsman said that the failure to send out unambiguous papers for the appeal and the failure to consider an adjournment were maladministration.
12. In the period before the day of the appeal, an education officer had advised parents about the preparation and conduct of their appeals. The same officer then appeared at the hearing as the presenting officer for the council.
13. Some of the parents said they felt betrayed because, having gone through their case beforehand with the officer, they found the same officer was now in a position of strength to argue against them. The officer knew how the parents might argue at the hearing and, in some cases, had given them advice on tactics.
14. The Ombudsman accepted that the change in the officer's role from adviser to adversary was unnerving for some parents. It was inappropriate that the same officer should fulfil both roles.
15. When the Ombudsman's concerns were drawn to the council's attention, it quickly convened a different appeal panel and offered the 10 complainants the opportunity for a fresh hearing. The Ombudsman said this was commendable.
16. The Ombudsman was also glad that the council offered fresh appeals to other parents who had not complained to the Ombudsman but were in the same position as those parents who had. There were over 40 parents in that group.

Conflict of roles

Outcome

(Report 99/C/5295 et al)

B5: Exclusions

Exclusion followed a single incident – government guidance

1. Mrs Lee complained that an independent appeal committee did not properly consider her appeal about her son Robert's permanent exclusion from his secondary school.
7. At the meeting the education welfare officer asked Robert to explain his reluctance to return to school. Robert said that he did not want to return because he was frightened of the teacher about whom the allegations had been made. At the request of the education welfare officer he clarified the allegations.

Background

2. Robert was permanently excluded on 11 March 1999.
3. Robert's school record showed that he was a keen pupil with no disciplinary problems, although the school had expressed concerns about his level of maturity and provided extra support and encouragement to Robert to assist him in his development. Until the Spring term 1999 his attendance record was good. In January 1999 he was awarded a pupil of the month award by the school.
4. On 1 February Mrs Lee complained to the school about an incident with a member of staff which had upset Robert. Robert considered that the teacher had been unpleasant and spoken harshly to him.
5. On 1 March Mrs Lee made a further complaint about the same teacher. Robert's attendance had now become poor. After the headteacher had looked into the complaints about the member of staff, he did not consider that they were justified. He wrote to Mrs Lee to say that he was concerned that spurious and malicious allegations were being made. A meeting was held on 11 March between Mrs Lee, Robert, the headteacher and the education welfare officer.
6. It was clear to the Ombudsman that until that meeting the headteacher was willing to allow Robert to continue at the school.
8. After the meeting the headteacher told the education welfare officer that Robert would be permanently excluded because there had been a total breakdown of any support for the school by Mrs Lee, who was supporting the malicious allegations of her son.

Appeal

9. Mrs Lee appealed against the exclusion. The Ombudsman was critical of two aspects of the appeal. The first was that the first appeal meeting was cancelled because a member of the committee forgot about it. This was maladministration. A second date was arranged which was marginally outside the normal time guidelines. Mrs Lee had prepared for the appeal on one day only to find out when she arrived that it had been cancelled.
10. The Ombudsman recognised that appeals are difficult for all the parties involved and, although the hearing was reconvened quickly, Robert and his family were caused added stress. This was an injustice resulting from maladministration.
11. The Ombudsman's second concern was about the way the appeal committee members approached their decision.

12. Until the meeting on 11 March the school did not intend to exclude Robert. The job of the appeal committee was therefore to consider whether exclusion was a reasonable response to a single incident, and to the repetition of the allegations against a member of staff after the school had concluded that they were unfounded.
13. Robert was distressed by the separation of his parents and after incidents at school which upset him, his previous excellent record changed to one of poor attendance and lateness. It was only six weeks after the first incident that he was excluded permanently. At least part of the headteacher's decision appeared to rest on the actions of Mrs Lee rather than Robert.
14. The Ombudsman noted that, at the meeting at which Robert was excluded, the only reference which had been made to a possible sanction for his behaviour was a temporary suspension if he refused to apologise. He did apologise. He was never given any indication at the meeting that his conduct could result in a permanent exclusion. The Ombudsman also noted that Robert repeated the allegations against the teacher only when asked to do so to provide an explanation for his reluctance to return to school.
15. Government guidance at the time was clear that exclusions should be used only as the ultimate sanction for serious misbehaviour. The Ombudsman

did not accept that the committee had sufficient regard to this advice in reaching the view that Robert's actions constituted sufficiently serious behaviour to warrant permanent exclusion. There was no previous history of misbehaviour and no attempt had been made to try alternative ways of dealing with the situation such as a temporary suspension. It was maladministration to fail to have sufficient regard to government guidance and no appeal committee could reasonably conclude that exclusion was appropriate in the circumstances.

Outcome

16. Mrs Lee had wanted Robert to return to the school. However, by the time of the Ombudsman's report she no longer felt it was in his best interest to do so.
17. The Ombudsman recommended that the school should:
 - ensure that all school records held on Robert included a copy of the Ombudsman's report; and
 - consider training provision for appeal committee members to ensure that they were fully aware of the guidance about exclusions.

(Report 99/C/2819)

B6: Special educational needs

Child with statutory statement – transfer from primary to secondary school
– incorrect advice given to parents – wrong procedure followed

1. Miss Simpson complained about the way a council dealt with the transfer of her daughter, Lisa, from primary to secondary education in September 1999. Lisa had a statement of special educational needs. She was not offered a place at the secondary school for which Miss Simpson expressed a preference.

Procedures

2. The Ombudsman noted an important point about the procedures required:

“The admission of children to secondary school should be conducted in accordance with the law and with regard to the guidance issued by the Secretary of State. The law and guidance on the admission of children who have statements of special educational needs is different from the law and guidance on the admission of children for whom statements have not been issued. Education authorities should ensure that parents are given accurate and timely information about admission arrangements and their statutory rights.”

3. The council’s booklet for parents contained inaccurate information. It advised that parents of children with statements should apply to schools for admission. But in law it was the council which was the admission authority for children with statements, and not any individual school. Moreover, the booklet gave no information about the statutory right of appeal to the Special Educational Needs Tribunal in respect of children with statements if their parents’ preferences for admission to a school were not met. The defects in the admissions booklet constituted maladministration.

What happened

4. Miss Simpson followed the inaccurate information she was given and applied to four schools for a place for Lisa. None offered her a place. If the council had acted properly, Miss Simpson would have known that she should tell the council her preference and that she need not make applications to individual schools. The council should have made clear by what date parents of children with statements should tell the council of their preferences. That date, the Ombudsman said, should have been consistent with the date by which applications had to be made to schools. In the case of Miss Simpson’s preferred school – Laurel School – that date would have been 20 November 1998.
5. In September 1998 the council asked the headteacher of Lisa’s primary school to arrange an annual review and said that this was to discuss her move to secondary school. The review was conducted on 7 November. But the council failed to take any action on the report of the review until March 1999. That delay was unreasonable and amounted to maladministration.
6. In March Miss Simpson asked the council to name Laurel School in Lisa’s statement. The council should have considered the request in accordance with the criteria specified in the Education Act 1996 and should either have acceded to the request (after consulting the school) or rejected the request and informed Miss Simpson of her right of appeal to the Special Educational Needs Tribunal.
7. But the council did not consider the request in accordance with the law and decided that the general admissions

procedure should be followed. So Miss Simpson believed she had to appeal to the Laurel School Appeal Committee, which she did. Under the law it was not appropriate for that appeal committee to consider Miss Simpson's appeal.

8. On 5 July the council issued an amended statement naming Sycamore School as the secondary school to which Lisa should transfer in September. Miss Simpson appealed to the Special Educational Needs Tribunal but this was now too late (she was given a date for a hearing in December). The *Code of practice on the identification and assessment of special educational needs* issued by the Secretary of State advised that arrangements for a child's placement should be finalised by the beginning of his or her last term before transfer.
9. The council reviewed the position. It recognised that the wrong procedures had been followed. It decided that it could not expect to win the appeal so on 6 September issued another amended statement naming Laurel School. Term began on 2 September at Sycamore School and on 7 September at Laurel School. Following representations from the head of Laurel School, the council told Miss Simpson Lisa could not go there after all, and on 13 September issued another amended statement naming Sycamore School. The Ombudsman said this chopping and changing about what was the appropriate school amounted to maladministration.

Correspondence

10. The Ombudsman was also critical that the council failed to answer queries from Miss Simpson at various points. The council repeatedly failed to give proper replies to her letters or, in some cases, to reply at all.

Injustice

11. The Ombudsman found there was injustice to Miss Simpson and Lisa. They were both caused protracted uncertainty, and consequent distress, about the secondary school to which Lisa would transfer. Her transfer was not handled in accordance with the law and that, in itself, was an injustice. The transfer from primary to secondary school was an important stepping stone in any child's life. Because of the council's maladministration, Lisa missed the first week of secondary education and the Ombudsman had no doubt that that was a disadvantage to her in settling in at secondary school.

Outcome

12. The Ombudsman recommended that the council should pay Miss Simpson £1,000; and should complete as soon as possible its review of procedures for dealing with the transfer of children with statements of special educational needs.

(Report 99/A/3223)

B7: Special educational needs

Child with statement – choice of school – transport costs – ability of parent to appeal

1. Mr Ash complained about the way a council considered the question of a suitable school for his son, Joe, and the question of how transport costs should be met.
7. The council amended the statement to name School C. The statement referred to the council providing the equivalent of transport to and from School B.

What happened

2. Joe had a statement of special educational needs. Following a period in his local primary school, he moved to a special school for children with physical disabilities (School A).
3. After some months, School A said it thought it could not adequately meet Joe's needs. The school suggested he should transfer to a school for children with learning difficulties (School B).
4. Mr and Mrs Ash visited School B but did not consider it suitable for Joe. They requested a place in a different school for children with learning difficulties (School C). School C was 22 miles from their home, whereas School B was five miles away.
5. The council told Mr and Mrs Ash that, in its view, School B was the nearest appropriate school which could meet Joe's special educational needs. The council said it would agree to a placement at School C, but only if Mr and Mrs Ash paid the difference in transport costs. That amounted to £17 a day.
6. Mr and Mrs Ash said they were unable to meet the cost. They said that, if the council amended the statutory statement to name School B, they would appeal to the Special Educational Needs Tribunal.
8. Mr and Mrs Ash were unable to pursue an appeal. By law parents could not appeal against non-educational provision. Nor could they appeal on the grounds that School B – which was, in effect, the school to which Joe would have to go – was not an appropriate school because School B was not named in the statement as the school which Joe should attend.

Code of practice

9. The *Code of practice on the identification and assessment of special educational needs* issued by the Secretary of State was an important consideration in relation to the complaint. Paragraph 4:60 of the *Code* referred to transport costs for children with statements as follows:

“The parents' preferred school may be further away from the child's home than another school which is appropriate to the child's special educational needs. In such a case it would be open to the LEA to name the nearest school, because that would be compatible with the efficient use of the LEA's resources. It would also be open to the LEA to name the school preferred by the child's parents, so long as the parents met the transport costs.”

10. The Ombudsman consulted the Department for Education and Employment. The Department, while pointing out that the interpretation of the law was ultimately a matter for the

courts, said that it was its view that the council should not have named School C when it was aware that the parents could not or did not agree to meet the transport costs. The council should have proceeded to name its preferred School B, thus allowing the parents to contest the suitability of that school on appeal. It considered that the last sentence of paragraph 4:60 of the *Code* referred to circumstances where the parents did agree to meet the extra transport costs.

The Ombudsman's view

11. The Ombudsman said that Mr and Mrs Ash had found themselves in a 'catch 22' situation. The council named the school they wanted in their son's statement but they could not afford to pay the transport costs and had been denied an opportunity to challenge the suitability of School B for Joe before the tribunal. The Ombudsman said:

"Paragraph 4:60 of the Code gives the council a choice but I think the last sentence of 4:60 would be unreasonable advice if it allowed councils to avoid appeals to the tribunal and to force parents into the situation faced by Mr and Mrs Ash. Thus I think the only reasonable construction to put on this sentence is that it offers an alternative where parents want their child to go to another school and agree to pay the transport costs."

12. The council knew prior to amending the statement to name School C that Mr and Mrs Ash did not agree to pay

£17 a day. So the council failed to have proper regard to the *Code of practice*. It also failed to have proper regard to its own policy, which referred to such circumstances and the situation that the parent or guardian "agreed to pay any additional costs ...".

Negotiation

13. The Ombudsman also accepted that an undertaking had been given by the council that it would negotiate on transport costs. But that undertaking was not fulfilled and that failure was also maladministration.

Remedy

14. The Ombudsman recommended that the council should either:
 - (a) agree with Mr and Mrs Ash how much they could reasonably afford to contribute towards the transport costs to School C and pay the balance; or
 - (b) immediately amend the statement to name School B so that Mr and Mrs Ash could appeal.
15. The Ombudsman also recommended that the council should pay Mr and Mrs Ash £250 for the time, trouble, stress and frustration they had been put to in pursuing their complaint with the council and with the Ombudsman.

(Report 00/C/509)

B8: Special educational needs

Annual reviews – monitoring – child excluded from special school

1. Mr and Mrs Hill complained that a council failed to make provision for the education of their son, John, after he was excluded from school.

What happened

2. John attended a secondary school for pupils of normal ability but who had emotional and behavioural difficulties. This was the only such school in the council's area.

3. After four years at the school, John was excluded permanently. Mr and Mrs Hill did not exercise their right to appeal against the exclusion. They accepted that John's behaviour was extreme and that the school found it difficult to cope with him. They hoped that his exclusion would lead to more suitable provision for him.

4. John was referred for psychiatric assessment. That assessment gave a diagnosis of attention deficit and hyperactivity disorder (ADHD).

5. The council failed to make any provision for John's education for a year.

Annual reviews

6. John had a statement of special educational needs. The Ombudsman found that the council failed to ensure that John's statement of special educational needs was reviewed annually as the law required.

7. The council delegated responsibility for annual reviews to schools. But it had no system in operation for identifying and pursuing cases where the review was not done at the right time.

8. In one year there was no annual review at all. The next year there was an annual review but the school failed to follow through the recommendations of the review. It was a few months later that John was excluded. The council itself did nothing to pursue the recommendations of the review.

9. The Ombudsman commented:

"The council says it delegates the review task to the school. The council cannot avoid its responsibilities in this way. The council failed to check on the progress of John's annual review and to ensure that his statement was amended in conjunction with the statutory time scales."

10. The Ombudsman added that this failure was particularly significant in the light of officers' knowledge that John's school was known to be lax about reviewing and therefore was in greater need of progress chasing.

Educational provision

11. The Ombudsman recognised the difficulties of providing suitable education for John prior to and following his diagnosis of ADHD. But, the Ombudsman said, the law did not give councils the option of failing to make any provision at all. John had no educational input for a year.

12. Following John's exclusion, nothing was done to draft a revised statement of special educational needs. The need for such a revision was one of the recommendations of the review.

13. The Ombudsman said that having an updated statement would not of itself have provided an easy solution to all the problems. But the process of drafting and discussing the statement

with the family could have brought out all the possible educational options, including residential provision out of the area.

thought it probable that he would have gained some benefit from individual tuition. The Ombudsman recommended the council to make a payment of £750 to Mr and Mrs Hill.

Outcome

14. The Ombudsman recognised that there were problems in assessing and meeting John's needs, particularly during the time needed for a medical diagnosis and establishing whether medication would be effective. It was possible that, in the meantime, John might have gained little benefit from formal education either locally or outside the area. But the Ombudsman

15. The Ombudsman noted that the council was taking appropriate steps to ensure that schools knew their responsibilities for carrying out annual reviews and that it was improving its information systems so that it could properly monitor progress and ensure that all the necessary action about reviews was taken.

(Report 99/C/1823)

B9: Special educational needs

Annual reviews – provision required by statement not made

1. Miss Cooper complained through her solicitor about the way a council dealt with the special educational needs of her son, David.

Background

2. David had a statutory statement. During his time in primary school and the first term of secondary school, the educational provision in the statement was met and David progressed well.

3. But his statement was not then reviewed for two-and-a-half years, despite the legal requirement that a review had to be carried out at least once a year. For a period of two years and a term, David did not receive the provision detailed in the statement. This was initially because the school was not aware of the existence of the statement and later because the school did not respond to approaches from the council's special needs section.

Annual reviews

4. The council relied on schools to carry out reviews of statutory statements. The Ombudsman thought it was not unreasonable for the council to ask individual schools to arrange review meetings and to report on their conclusions. But the legal duty to ensure that reviews took place rested with the council.

5. The Ombudsman said that the council's administrative arrangements were chaotic. There was no system to ensure that reviews were requested when due, or for prompt and effective follow-up action if they did not take place. There was no procedure to ensure that the special needs section was informed when a child who was the subject of a statement changed schools. There was also no means of cross-referencing where children had been known by more than one surname during their school career.

That was relevant in this case because the statement was registered with David's father's surname, whereas he was known to the school as David Cooper.

6. The council recognised that its arrangements were unsatisfactory and introduced new systems.

Injustice

7. The council failed, for a prolonged period, to make the provision it should have done for David's special educational needs as required by law. David did not have the additional support he needed. He began to have behavioural problems and eventually was excluded from school.
8. The Ombudsman accepted that it was likely that David's behavioural problems were wholly or largely related to his educational difficulties. Proper provision for his educational needs might have avoided the problems which followed, as well as ensuring that he was able to fulfil his

educational potential. The fact that proper provision was not made for such a long period caused injustice.

9. The Ombudsman was also concerned that, after the exclusion, the council failed to provide any form of interim education for David for a period of about four months before he took up a place in another school. The failure to provide some form of education during that period was not acceptable.

Outcome

10. The Ombudsman noted that, following a report from an educational psychologist, the council provided increased support for David, which might be expected at least to go some way to remedying the shortfall in his education.
11. The council agreed to pay £2,000 to David and £150 to Miss Cooper. The Ombudsman accepted that this was a satisfactory outcome.

(Report 99/C/1414)

B10: Student grants

Student with disability – refusal of financial aid for equipment

1. A student, John, complained about a council's refusal to fund the purchase of specialist technology equipment to help him with his degree course at university. He was registered as a blind person and used computers as his main study aid. He said that he had to give up his course for a period because of the difficulties.

Assessment

2. Help could be given for the purchase of equipment under the disabled student allowance scheme provided for in the relevant regulations, up to a maximum of £3,745. The cost of the equipment John requested originally totalled over £11,000. The council received a letter from the university's

support lecturer for visually impaired students saying John already had everything he needed to complete his course successfully. The council rejected the request for help.

3. The council then received the view of John's consultant ophthalmic surgeon who argued forcefully that John needed very special help that he did not have at that time. Another official of the university suggested to the council that there should be an independent report by an access centre. The council commissioned such a report. That report recommended new equipment and upgrades to existing equipment at a cost of some £1,500.
4. The council rejected the independent assessment on the basis of the original statement by the university's support lecturer that no additional help was needed. But the Ombudsman pointed out that the independent assessment had been commissioned to evaluate that original statement. The Ombudsman commented:

"Clearly the council must have the discretion to reject an assessment where it feels it is somehow flawed. In that case it would need to commission an alternative independent assessment on which it could feel safe to rely. Even a critique which undermined the value of the first assessment would not justify the council in doing nothing at all; it would merely justify the production of a second opinion."

5. The Ombudsman considered that the council gave inadequate consideration to the access centre report which it had commissioned.
6. When the council received further representations from John's parents, it asked a council computer expert for advice. The Ombudsman found it

extraordinary that this expert was not asked to see John and assess his needs, but was expected to give a technical view on which officers could rely in reviewing their refusal to accept the results of an independent assessment. The way this review of the council's decision was conducted was maladministration.

7. The Royal National Institute for the Blind became involved on John's behalf and submitted expert evidence to the council. The council agreed to make a contribution of £670 to the cost of equipment John's parents had by then bought him. The equipment cost some £1,700 which was well within the ceiling under the disabled student allowance scheme.

Outcome

8. The Ombudsman considered that maladministration by the council caused John injustice. He suffered distress and depression and, as a result, suspended his studies for a period; and his parents were put to financial expense.
9. The Ombudsman recommended that the council should:
 - review its arrangements for processing applications for disabled students' allowances;
 - reimburse the cost of the new equipment purchased by John's parents with interest at the county court rate; and
 - make John a payment of £2,000 for his distress, worry, and frustration, and as some compensation for the break to his studies to which the council's maladministration contributed.

(Report 99/B/2282)

B11: Transport

No school offered by council – parent arranged school outside the borough – free transport refused

1. Mr X complained about the actions of a council over the transfer of his daughter Y from primary to secondary school.

Offer of a school

2. Mr X expressed a preference for five schools and was not offered a place at any of those. He appealed against refusal for three of them and was unsuccessful. He said that at no stage did the council offer him a school.
3. The council's booklet for parents said that parents should be offered a place before the end of June.
4. The council explained that, according to their records, a place at School A was allocated. However, there was an administrative error, as a result of which no letter was sent to Mr X offering the place.

Application for travel assistance

5. After the start of the autumn term Mr X obtained a place for Y at School B. This was a school in a neighbouring borough which was more than three miles from his home. He applied to the council for assistance with travel and the council declined.
6. The Ombudsman found that the council's decision took into account that School A was Mr X's second preference in his original application. That was incorrect. There was no dispute that the council took into account incorrect information that a place had been offered at School A. So the decision could not be regarded as safe.

Denominational transport

7. The Ombudsman learned that School B was a Church of England school and that Mrs X and the children attended the local Anglican church, and Y was attending a Church of England primary school prior to transfer.
8. The council's policy on assistance to pupils provided that assistance could be given for a pupil to attend a school where the religious education provided was that of the religion or denomination to which their parent adhered.
9. In the original application for travel assistance Mr X did not mention the church point. But when that information came to light, the Ombudsman invited the council to take it into account in considering the application afresh.

The council's response

10. The council reconsidered Mr X's travel application and agreed that:
 - Y should be offered a travel pass; and
 - Mr X should be offered reimbursement for the cost of travel already incurred.

Outcome

11. The Ombudsman considered this was a very positive and most satisfactory response to the complaint.

(Local settlement 00/A/9227)

B12: Transport

Child of Orthodox Jews – special arrangements for the Sabbath – arrangements withdrawn – consultation

1. Mr Emmanuel complained about the way a council dealt with transport to and from school for his daughter Becky.
6. Mr Emmanuel complained to the council. The council sent him a letter saying it would pay him a mileage allowance if he applied for one. He did not receive the letter. He complained again.

What happened

2. Becky attended a school for pupils with severe learning difficulties. The school was over three miles from home and she was transported by minibus to and from school every day.
3. Becky's family were Orthodox Jews. So she had to get home before dusk on Fridays. For most of the year there was no problem and she was transported home in time for the Sabbath. But in the winter months she had to be collected from school and taken home before classes were over. Until 1997 the council arranged and paid for Becky's early collection on Fridays.
4. In 1996 the council consulted about a draft of a new school transport policy. Mr Emmanuel was consulted. But he did not comment because the consultation document did not make clear that Becky would be affected by the proposed policy.
5. The council approved the new policy in the autumn of 1996. The council decided that parents whose children's school transport arrangements would be affected by the new policy should be consulted and that parents would be contacted individually. This did not happen. So Mr Emmanuel was not notified. He did not learn about the change until the autumn of 1997 when he was told that free transport for Becky would not be provided by the council to enable her to return home on Fridays before the end of the school day in winter.
7. The council obtained an opinion from counsel. The opinion said there was a reasonable argument that it was implicit in the policy that transport would be provided only at normal times for arriving at and leaving school. Counsel also said that the education authority had to take account of religious issues and that this should be done when the policy was formulated and should also be considered in the application of the policy to particular cases.
8. The council told Mr Emmanuel that the matter would be put to members at the end of June 1998. It subsequently told him it would not do this.

Faults

9. The Ombudsman concluded that the consultation about the draft transport policy was flawed. The document did not make clear how the proposals would affect children, such as Becky, who needed transport from home to school before the normal time on the Sabbath during the winter months. As a result, Mr Emmanuel did not send the council any comments. The Ombudsman commented:

"If consultation is to be meaningful, the effect of proposals should be clearly explained."

10. The council decided that parents affected by the new policy should be notified before changes were introduced. Mr Emmanuel was not notified. That also was maladministration.
11. The council told Mr Emmanuel that he had a right of appeal to the Special Educational Needs Tribunal about the provision of transport for Becky. That advice was incorrect. The provision of this inaccurate information was maladministration.
12. The council did not honour its assurance that the education committee would be asked to review the policy. When the council told Mr Emmanuel that the matter would not be put before the committee after all, it said this was because counsel had advised that the policy was lawful. But counsel's opinion had been received before the council gave Mr Emmanuel an assurance that the matter would be put to the education committee. It was maladministration for the council to go back on its promise.

Injustice

13. Because of the maladministration, Mr Emmanuel's concerns were not known to the education committee before the decision to change the policy was made. That was an injustice.
14. It was not possible to know whether the outcome might have been different. But there was no doubt that the council's maladministration put Mr Emmanuel to avoidable time and trouble in pursuing his complaint with the council and with the Ombudsman.

Remedy

15. The Ombudsman recommended that the council should:
 - pay Mr Emmanuel £250;
 - consider sympathetically a retrospective application for the payment of a mileage allowance; and
 - ensure that Mr Emmanuel's views were taken into account in the review of the special educational needs transport policy on which the council was proposing to embark.

(Report 98/A/1550)