



Section B

# Education

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# B1: Admissions

## Published admission arrangements – duty to apply published criteria – decision took into account a factor not specified in the published arrangements

Mrs A complained that her son, B, did not secure a place in a foundation secondary school.

### What happened

1. Mrs A applied for a place by the published deadline. B was not offered a place. The decision letter from the school gave no reason for the refusal.
2. It later became apparent – and this was confirmed by the school's representative at the appeal hearing – that B had been refused a place because Mrs A named the school as second preference on her application form. Places were offered only to first preference applicants.
3. Mrs A said she did not appreciate that there was any significance in the preference order. She fully expected to be offered a place in the school because B's older sister was already a pupil there.
4. The appeal was not upheld.

### Admission arrangements

5. The governors of the school were the admissions authority. They published a document for parents describing their admission arrangements and the criteria to be used if there were more applicants than places.
6. The admissions criteria were set out in priority order. The first priority was for children with a sibling already in the school.
7. The published oversubscription criteria did not give priority to first preference candidates over other candidates. The document made it clear that, in each priority category, the tie breaker for use if necessary would be distance from the school.

### Decisions

8. The Ombudsman pointed out that the *School admissions code of practice* issued by Parliament made it clear that, when a school was oversubscribed, the admissions authority had to apply the oversubscription criteria in its published admission policy when deciding which children should have places.
9. What happened here was that the admissions authority did not make the decisions by applying the published criteria. The authority made decisions by reference to a factor which was not stated in the published arrangements.
10. If the published admissions criteria had been applied, B would have been offered a place. The first priority criterion was not oversubscribed.
11. The Ombudsman observed that one of the tasks of an appeal panel was to consider whether the published admission arrangements were properly applied. If a child was wrongly denied a place, the panel should uphold the appeal. There was no indication that the appeal panel addressed its mind to this particular question.

### Outcome

12. The Ombudsman suggested that B should be offered a place, since that was what ought to have happened in the first place.
13. The governors agreed to offer B a place. The Ombudsman welcomed this very positive response, and agreed that this was a satisfactory outcome to the complaint.

*(Local settlement 02/A/5666)*

## B2: Admissions

### Explanation of reason for refusal of place – documents in advance of appeal – decision-making process – reasons for decision of panel – constitution of panel

Ms M complained about events surrounding the refusal of a place for her son in a Roman Catholic secondary school and the appeal. The governing body was the admissions authority.

#### Code of practice

1. The Ombudsman found that there were a number of faults. These faults should not have occurred if the governors and the appeal panel had followed guidance in the *School admissions code of practice* and the *School admission appeals code of practice* issued by Parliament.

#### Reason for refusal

2. The letter on behalf of the governors refusing a place did not make it clear what the reasons for refusal were.
3. The *School admissions code of practice* advised that the admissions authority should write to the parents giving full reasons why the application was unsuccessful against the published admissions criteria.

#### Documents

4. No information was provided to Ms M about how to appeal or how the appeal process worked. She was not aware that she could take someone with her to support her during the appeal. Had she known that, she would have made an arrangement.
5. The *School admission appeals code of practice* advised that parents should be given details of how to make an appeal and parents who appealed should be advised that documents they wished to form part of the appeal should be sent in

advance. It was important that admissions authorities should prepare guidance on appeals for parents based on their knowledge of their own local circumstances.

6. No documents were supplied to Ms M prior to the appeal. Neither was any information given to members of the panel in advance.
7. The *School admission appeals code of practice* gave explicit guidance that, at least seven days in advance, panel members and parents should have a written statement summarising how the admission arrangements applied to the parents' application; and a statement summarising the reasons for the decision and giving, for example, supporting information that the admission of an additional child would cause prejudice to efficient education.
8. Ms M said that it was not until she arrived at the appeal that she learnt that her son had been rejected under the first criterion, which related to Catholic practice. If she had known that, she would have been able to go back to her priest to get a further statement from him.

#### Decision-making process

9. The *School admission appeals code of practice* emphasised that the first task of a panel was to decide whether it was satisfied that admission of an additional child or children would cause prejudice to efficient education or the efficient use of resources. The panel had then to consider also whether the admission arrangements were properly applied, and consider whether the circumstances of any appellant were sufficiently compelling to outweigh the prejudice.

10. There was no evidence that the panel followed the correct process. The notes of the appeal panel clerk indicated that, at the end of each hearing, the chair of the panel explained how extra pupils could affect the running of a school. That was wrong. That explanation had to be given at the start by the admissions authority and not at the end by the chair of the panel.
11. It was not clear to the Ombudsman from the records on what grounds some appeals were upheld and others were not.

### Composition

12. The panel did not include a lay member and that was contrary to a legal requirement. All three panel members were retired or serving senior teachers.

13. The law required that at least one lay member was included. That was someone without personal experience in the management of, or the provision of education in, any school.

### Outcome

14. The governors accepted the Ombudsman's suggestion that Ms M should be given a fresh appeal.
15. They also agreed to review the arrangements so as to eliminate for the future the faults which the Ombudsman had found.

*(Local settlement 01/A/6246)*

## B3: Admissions

### Reasons for refusal of place – guidance on appeals – statutory prejudice – records – appeal decision letter

Mrs A complained about the admission and appeal arrangements in respect of her application for a place in a voluntary aided school for her son.

#### What happened

1. The Ombudsman found that the arrangements made by the governors of the school, who were the admissions authority, failed in important respects to follow the guidance in the statutory *School admissions code of practice* and the *School admission appeals code of practice*.

#### Reason for refusal

2. The decision letter sent to Mrs A, refusing a place for her son, did not explain the reasons why her application was unsuccessful.

#### Guidance on appeals

3. The Ombudsman pointed out that the Secretary of State thought it important that admission authorities should prepare guidance on appeals for parents, based on their knowledge of their own local circumstances.
4. One example of the advice needed was clarification of whether any earlier correspondence between the parent and the school would automatically be included in the papers for the appeal panel, or only those documents which the parents submitted specifically for the appeal.
5. Mrs A said the only information she was given was notice of the date and time of the appeal.

#### Statutory prejudice

6. The Ombudsman pointed out that the first task of an appeal panel was to consider whether the admissions authority had proved that the admission of an additional pupil or pupils would prejudice the provision of efficient education or the efficient use of resources.
7. The statement provided on behalf of the governors said merely that the admissions number had been reached and that further admissions would cause prejudice. It referred to a shortfall in teaching and general accommodation but provided no details of what these were, what effect they had and how the position would be affected by further admissions.
8. The records of the appeal panel provided no indication that the panel sought to satisfy itself on the question of prejudice, and this was not referred to in the decision letter after the appeal.
9. The Ombudsman concluded that the panel did not properly address this issue.

#### Records

10. The records of the proceedings of the appeal panel were sparse. There was no record of the decision or the reasons for the decision.

#### Decision letter

11. The decision letter after the appeal comprised two sentences and merely stated that there were insufficient grounds to uphold the appeal.

12. The Ombudsman pointed out that there was a statutory requirement that the parents should be notified of the decision and the grounds on which it was made. There was significant advice in the *School admission appeals code of practice* about what issues should be covered in the decision letter.

14. The governors also fully reviewed the Ombudsman's comments about procedure and introduced new arrangements in accordance with the Ombudsman's suggestions.

### Outcome

13. The Ombudsman did not consider that the appeal was satisfactory. At the Ombudsman's suggestion, the governors agreed to arrange a fresh appeal.

*(Local settlement O2/A/4771)*

## B4: Admissions

### Consideration of prejudice – balancing exercise – inspection of facilities

Mrs Milner complained about the way the governing body of a voluntary aided school and then its appeal panel considered the application and appeal for her daughter to attend the school.

#### Consideration of prejudice

1. The Ombudsman criticised a number of aspects of the conduct of the appeal. The first was the way in which the panel considered whether there would be prejudice to efficient education or the efficient use of resources if further children were admitted.
2. The panel asked itself the wrong question. The panel considered whether or not prejudice would be caused by the admission of all 53 children involved in the appeals. The question which the panel needed to consider was not whether all the children could be accommodated without prejudice being caused, but rather whether the school could accommodate *any further* children without prejudice being caused.
3. The Ombudsman was also concerned that the panel made a decision about the prejudice case after the first appeal was heard. The Ombudsman pointed out that the panel should not reach a view until all the appeals had been heard, otherwise they were denying appellants the chance to challenge the case put forward by the governors. The Ombudsman was particularly concerned to find that each appellant was told that the panel had already decided that the governors had made out their case.
4. The admission limit was 160. But the appeal panel members all knew that the school could, and would, take 168 children. The Chairman of Governors told the panel that he would allocate places up to 168 if the panel did not.

5. The Ombudsman said that the panel should have concluded that prejudice would arise when 168 children had been admitted. But it was clear that the panel regarded 168 as the maximum number which could be admitted. The Ombudsman pointed out that, on the contrary, 168 was the point at which the balancing exercise required by the *School admission appeals code of practice* should be carried out. That was that parental cases should be balanced against the prejudice which would arise by admitting their child to the school. The panel did not operate in that way.

#### Inspection

6. The Ombudsman was also concerned to note that members of the panel visited the school and inspected the facilities in the absence of the appellants. The Ombudsman said that could be seen as a breach of the rules of natural justice.

#### Outcome

7. The Ombudsman found that there was maladministration in the conduct of the appeal. However, in the particular case of Mrs Milner, the Ombudsman was satisfied that no injustice was caused to her. That was because the panel properly considered her case, and the case would not have been regarded as strong enough to outweigh the prejudice to the school.
8. However, the Ombudsman recommended that the governing body should consider the issues raised by the report and ensure that appeal panel members and the panel's clerk were properly trained and made aware of the requirements of the *Code of practice*.

(Report 02/C/2664)

## B5: Admissions

### Refusal of admissions authority to arrange an appeal – claim that no appeal was received – need for a system of receipts

Mr A complained that the governors of a foundation school refused to arrange an appeal for him following refusal of a place in the school for his child.

#### What happened

1. The governors specified in their literature a closing date for appeals.
2. Mr A said that he handed over his appeal form by the due date at the school's reception desk. Subsequently the school said it had no record of his appeal form. By this time the appeal hearings had been held and the school declined to take any further action.

#### Need for a system

3. The Ombudsman observed that there was always potential for this kind of difficulty to arise. He therefore expected that admission authorities would have a system to cover the point. For example, it would be sensible to have a system of issuing receipts when appeal papers were received and it should be made clear in the literature that this would be done, so that parents knew they should expect a receipt. It would then be reasonable to expect that parents would be on notice that they had to get a receipt and would make enquiries if they did not.
4. The Ombudsman found that what happened at this school was that reception staff made a record of any communication which was handed in. They issued a receipt if one was requested. But that did not seem to the Ombudsman to cover the point. It might be argued that Mr A would have been prudent to ask for a receipt. But on the other hand, it was plain to him that the

school did receive the form and the Ombudsman could quite see that Mr A did not think it necessary to ask for a receipt. The Ombudsman found that the appeals brochure did not advise parents that they could expect a receipt.

5. The clerk to the appeal panel said that her practice was that she sent parents a receipt when she received an appeal application. However, she accepted that there was no reference to this in the explanatory guide for parents.
6. The clerk agreed that she would amend the booklet to inform parents that they would receive an acknowledgement within seven days and that, if they had not received anything by then, they should contact the clerk as soon as possible.

#### Outcome

7. The Ombudsman recognised that Mr A said he delivered the appeal application in person and handed it to a member of staff, and he showed the Ombudsman a copy of what he wrote. As the appeal brochure did not advise parents that they should expect a receipt, it could reasonably be taken that Mr A did what was required.
8. In the circumstances, it seemed to the Ombudsman that a reasonable way to proceed was that the school should arrange an appeal for Mr A. This was agreed.
9. The Ombudsman was pleased to note the school's prompt response and also pleased to note that the literature would be changed so that this kind of problem could be avoided in future.

*(Local settlement 02/A/5880)*

## B6: Admissions

### Ambiguous criterion – basis of consideration by appeal panel

Mr A and Ms B complained about the handling of their application for a place for their son, C, in a Roman Catholic primary school.

#### Family circumstances

1. The closing date for applications was 16 December for admission in the following September. Mr A and Ms B learnt on 29 November that they were to become the adoptive parents of C. They applied for a place for C by the closing date.
2. C was placed with them on 30 January. They arranged for him to be baptised on 10 February.

#### Admission arrangements

3. The first priority for admission was “baptised children of committed Catholic parents”. The governors interpreted that as meaning that the child had to be baptised before the closing date for applications. The governors had confirmation that C had been baptised before their meeting on 15 February when they made the admission decisions. They refused a place for C.
4. The Ombudsman pointed out that no date for baptism was specified in the criterion. That was unsatisfactory because the criterion was open to differing interpretations.

#### Appeal

5. The panel which heard the appeal for a place at the school for C failed to take account of the fact that C had been baptised in the period between the closing date and the decision date, and the exceptional circumstances of the case which were supported by C’s social worker. The panel said that the governing body had to consider the circumstances at the time of the closing date and not on the date when the decisions were made. The panel therefore decided that the admission arrangements had been properly applied.
6. The Ombudsman said that an appeal panel ought to take account of new relevant circumstances which arose after the application for a place. The Ombudsman pointed out that his view was in line with what was said by the Court of Appeal in the case of *R v Richmond upon Thames LBC ex parte JC* (2000).

#### Outcome

7. The governors accepted that a panel could consider a significant change in a child’s circumstances. They offered a fresh appeal for C. They also agreed to revise the description of the admission arrangements.
8. The Ombudsman was satisfied with the outcome.

(Local settlement 01/B/10884)

## B7: Admissions

Infants – statutory definition of appeal panel’s role – advice given by council out of date – consideration of reasonableness – unfair procedure

Mr Meadows complained about a council’s handling of his application for a place for his son, Jim, in the reception year of a primary school, and the appeal against the refusal of a place.

### Background

1. The council had offered places in the reception year on the basis of 30 per class. So, under the relevant provisions of legislation, an appeal panel could only uphold an appeal in these circumstances if it was satisfied either that the child was wrongly denied a place because the published admission arrangements were not correctly applied, or that the decision of the admissions authority was unreasonable.
2. The Ombudsman found that the appeal panel had reasonable grounds for being satisfied that the published admission arrangements were properly applied. But the Ombudsman was not satisfied that the question of whether the decision of the admissions authority was unreasonable was properly considered.

### Reasonableness

3. Mr Meadows’ case for arguing that the decision of the council was unreasonable was that it was absurd that the council said he lived 1797 metres from the school (more than twice the actual distance) because the council only measured by road; that it was wrong of the council not to take into account a footpath which was surfaced, lit, maintained by the council and shown on the Ordnance Survey map; and that children said by the council to be living ‘nearer’ to the school would be walking past his house on the way to school.

4. The Ombudsman was not satisfied that Mr Meadows’ points about the circumstances of his child were properly taken into account in the panel’s decision, or that his arguments were properly considered.

### The task of an appeal panel

5. The Ombudsman commented:

*“Appeals panels play an important role in the admissions process. Panel members have a difficult, complex and demanding task. I can see in this case that the members acted conscientiously, thoughtfully and in good faith.”*

6. But the Ombudsman said it seemed there were two ways in which their job was made more difficult than it should have been.
7. The first was the lack of training. None of the panel members had been provided with any training about the new legislation relating to infant class appeals. And two of the three members had never had any training at all. The council said there were training opportunities four years earlier which the panel members did not take up. But that training would not have covered more recent developments. The Ombudsman said:

*“It seems to me to be important that the council should ensure that training opportunities are in fact taken; and that members should have further training at appropriate intervals.”*

8. The second difficulty for the panel was the advice given by the council about the powers of the panel and how they had to approach their task. In particular, this related to how the panel had to consider the question of whether the council’s decision was unreasonable.

9. The Ombudsman found that the advice given by the council took no account of the fact that the Court of Appeal had said (in *R v Richmond upon Thames LBC ex parte JC* in July 2000) that consideration of reasonableness could include the circumstances of the child as well as the circumstances of the school (and that advice to the contrary on this point in the *Code of practice on school admission appeals* was unjustified). The Ombudsman noted that the council's document on which its advice was based was issued in April 2000 and predated the consideration of the *Code* by the Court of Appeal. So the advice was out of date and failed to take into account a relevant factor. The Ombudsman said that the *Code* itself pointed out that it did not aim to provide definitive guidance on interpretation of law, which was a matter for the courts, and that appeal panels had to follow interpretation of law laid down by the courts.
12. The panel members were influenced by a point which was not canvassed in the appeal and which Mr Meadows had no opportunity to counter, and that was unfair. This was that members thought the fact that Jim needed to cross a main road to get to the preferred school undermined Mr Meadows' case. Mr Meadows said he could easily have countered that argument because there was no difficulty about crossing that road, and Jim had been doing that for more than two years while attending pre-school nursery on the school site.
13. The Ombudsman concluded that the appeal for Mr Meadows' son was not fair and satisfactory. That was maladministration and it caused injustice.

#### What the panel did

10. The way the appeal panel considered whether the decision of the admissions authority was unreasonable was that members considered whether the admission arrangements were correctly applied, but did not properly consider the other, quite separate, question of whether the council's decision in respect of Jim was unreasonable in the circumstances.
11. The approach followed by the panel in this appeal was inconsistent with their approach to two other appeals (where the panel declined to follow the council's advice and did properly consider the circumstances of the child as well as of the school).
14. The council had declined to take the opportunity to settle the complaint at an early stage by accepting the suggestion for a fresh appeal.
15. At the time of the report, the Ombudsman noted that it was not necessary to repeat that suggestion since by then Mr Meadows was entitled to a fresh appeal if he wished to have one in respect of the next academic year.
16. The Ombudsman recommended that the council should:
  - make Mr Meadows an *ex gratia* payment of £250 to compensate him for the uncertainty, anxiety and distress to him and his family and for his time and trouble in pursuing the complaint; and
  - review and update its advice for appeal panels and parents about infant class appeals.

#### Outcome

(Report 01/A/8869)

## B8: Admissions

### Written case in advance – records – reasons for decisions – training

Ms Shore complained about the appeal against the refusal of a place for her son in a foundation secondary school.

#### Training

1. The Ombudsman said that the evidence led him to the conclusion that the appeal panel members did not have a proper understanding of their role, the tests to be applied and the procedures to be followed.
2. There was no evidence that the governing body sought to ensure that panel members were properly trained. In this case only one of the three panel members had attended a training course. The Ombudsman commented:

*“The difficult nature of the panel’s task means its members should receive proper training in order to make their decisions correctly and in a consistent way.”*

#### Evidence

3. The admissions authority had to show that the admission of additional children would cause prejudice to efficient education. The *School admission appeals code of practice* issued by Parliament advised that the admission authority’s case should be sent in advance to appellants and appeal panel members.
4. The governors did not provide a statement in advance. In fact no written statement was ever provided to appellants. That, the Ombudsman said, was maladministration.

#### Hearing

5. There was a general session for all appellants to consider the case for prejudice and then individual hearings for each parent. The Ombudsman considered that the general hearing was procedurally flawed. The chair was not present for part of the meeting. The panel members seemed to have regarded themselves as being there with the school representatives to answer parents’ questions. And there were no adequate records.
6. The Ombudsman also noted, in relation to the individual hearings, that there were no notes of the panel’s discussion of the appeals or how they decided which appeals should be allowed. It was not possible from the contemporaneous evidence to show that the panel reached its decisions properly. The Ombudsman could not be satisfied that the panel gave proper consideration to Ms Shore’s appeal.

#### Outcome

7. The Ombudsman recommended that the governors should pay Ms Shore £250 for distress and the time and trouble she spent in pursuing matters; and review the way in which appeals were operated and the question of training for panel members.

*(Report 00/A/5380)*

# B9: Admissions

## Multiple faults – delay in provision of remedy

Miss Garston and Miss Walton complained about the handling of their applications for places for their children in a foundation secondary school.

suggestion. The Ombudsman commented:

*“If their response had been more positive, the complaints could have been dealt with much sooner.”*

### Multiple faults

1. The Ombudsman found 15 faults in the admissions and appeal arrangements. Amongst those faults were the following:

- before the appeal hearings, the appeals panel consulted the governors about the number of appeals which might be allowed, but the appellants were not involved in that discussion;
- the governors provided no evidence to support their assertion that they had correctly applied their admissions criteria, and the panel did not test that assertion;
- the governors' statement in advance did not attempt to demonstrate prejudice to education in the school if more pupils were admitted, so appellants had no notice of the case to be made; and
- at times the panel operated with only two of the three members because one member was absent, but the third member nonetheless took part in decisions about appeals where she had not heard the evidence.

### Proposed settlement

2. At an early stage in the investigation, the Ombudsman's investigator proposed that Miss Garston and Miss Walton should be offered fresh appeals. The governors and their officers rejected that

### Injustice

3. The Ombudsman pointed out that appellants were entitled to have their appeals considered in accordance with the applicable law and the *School admission appeals code of practice*. That did not happen in the appeals for Miss Garston and Miss Walton. The denial of that opportunity in itself amounted to a serious injustice. Also they experienced great frustration, uncertainty and anxiety over their concerns and in pursuing their complaints.

### Outcome

4. The Ombudsman recommended that the governors should:
- consider the applications of Miss Garston and Miss Walton for the next academic year and, if those applications were unsuccessful, arrange an early appeal;
  - review their procedures and those of the appeal panel to eliminate the faults identified in the report;
  - provide training for members of the governing body and appeal panels and their clerks; and
  - pay Miss Garston and Miss Walton £350 each.

*(Report 01/A/3034 et al)*

# B10: Admissions

## Evidence from headteachers

Mr and Mrs X complained about the way their appeal against the refusal of a place for their son in a secondary school was handled.

### Evidence from headteachers

1. Mr and Mrs X submitted a letter of support from their son's primary school headteacher as part of their appeal. The letter was returned to them and they were told that the council's policy was that such letters should not be written by headteachers and could not be considered by the appeals panel.
2. Mr and Mrs X said this was unfair and it prejudiced their appeal. They also said they were not told beforehand about the policy.
3. The council agreed to offer a fresh appeal since it accepted that Mr and Mrs X had not been told about the policy.

### The Ombudsman's view

4. The Ombudsman was pleased to note the settlement of the complaint by a fresh appeal. However, he was concerned about the council's policy and invited the council to reconsider it.

5. The Ombudsman said that in principle it seemed to him that an appeal panel should not be deprived of any information which parents wished to submit to support their appeal, including any comments from their child's current school. Also, the policy was probably difficult to enforce strictly and might disadvantage some children whose headteacher acted in accordance with the council's policy, whereas other children were given support because their headteacher thought this was appropriate notwithstanding the policy. Also, the Ombudsman could not see how the restriction could apply to the headteachers of voluntary aided and foundation primary schools, so that the parents of their children might have a letter whereas the children from community schools would not. That would be unfair.

### The council's response

6. The council agreed to change its guidance to headteachers, so that in future parents could submit supporting letters from their child's primary headteacher in connection with an appeal.

*(Local settlement 02/B/4914)*

# B11: Exclusion

## Transition from primary to secondary school – failure to plan provision – inadequate response to exclusion

Mrs Ansell complained that a council did not respond properly to the permanent exclusion from secondary school of her son, Mark.

### What happened

1. Mark had significant behavioural difficulties. In his final year at primary school the council issued a statutory statement of his special educational needs.
2. Mark transferred to a mainstream secondary school. After two terms he was permanently excluded. He took up a place in another mainstream school but after some six months was permanently excluded from there.
3. The council then arranged a place for Mark in a residential special school.

### Transfer from primary school

4. The Ombudsman found that the council failed to make adequate provision for Mark's transition from primary to secondary school. The council did not properly determine the level of support he would need. It failed to establish how the school would provide for his special educational needs. And it failed to respond in a reasonable and timely manner to representations from the school and from Mrs Ansell about Mark's need for additional support, expert advice and specialist services. The Ombudsman found these failures were maladministration which played a part in the failure of the placement.

### The secondary phase

5. The Ombudsman found that the council took reasonable and appropriate steps to secure an alternative place for Mark following his exclusion from the first secondary school. The time taken to achieve that was not excessive.
6. But the council did not make any provision for Mark, either in respect of his general education or his special educational needs, in the period between that exclusion and his admission to the second school. That was also the case for a period in the second school following Mark's exclusion. Altogether Mark lost nearly six months of schooling in his first two years of secondary school.

### Request for reassessment

7. Following the exclusion from the first secondary school, Mrs Ansell asked the council to reassess Mark's special educational needs. The council did not treat her letter as a request for a reassessment because the word 'reassessment' was not used.
8. But the Ombudsman said that Mrs Ansell's concern and intention could not have been more clear. She said Mark's needs had changed and his statement was out-of-date and needed to be reviewed.
9. The Ombudsman found that the council's failure to respond to the request in an adequate manner was maladministration. That denied Mrs Ansell an opportunity for a full reassessment of Mark's special

educational needs within a specific timescale, or a right of appeal to the Special Educational Needs Tribunal if the council had refused the request.

### Communication

10. The Ombudsman also found that the council failed to keep Mrs Ansell informed of progress towards securing a place for Mark in the residential special school, and about when the placement would start. That was also maladministration and contributed towards Mrs Ansell's fear and anxiety about Mark's loss of educational opportunity.

### Outcome

11. The council accepted that there had been failings and offered to pay £1,000 compensation to Mrs Ansell. The Ombudsman considered that was a satisfactory remedy.
12. The Ombudsman also noted that the council was giving high priority to developing a strategy on making interim provision for children with statements who were excluded from school, and for making permanent provision for them in accordance with statutory requirements.

*(Report 00/C/8896)*

# B12: Special educational needs

## Delay in assessment – deficiencies in procedures

Mrs Lake complained about the way a council dealt with the assessment of her son Tom's special educational needs.

letters were sent to him before the council's own deadline for replying had passed, and the reminder letter was sent to him on the day after the response period had elapsed.

### Assessment

1. Tom's school asked the council to carry out a statutory assessment of his needs. The council did so and produced a statutory statement. But the whole process took a year. The timescale laid down in the relevant regulations was six months.

### Outcome

5. The council accepted that it had acted with maladministration and agreed to:
  - pay Mrs Lake £250 for her time and trouble in pursuing her complaint;
  - pay Mrs Lake £500 to be used for the benefit of Tom's education;
  - carry out a review to ensure that the special educational needs assessment team was staffed sufficiently to ensure that statements were issued within the statutory timescale;
  - ensure that the training of its new caseworkers and the introduction of its new computer software was carried out as soon as possible;
  - ensure that decisions about how to make provision for assessed needs were not unreasonably delayed because of issues concerning the resources required to pay for it;
  - ensure that parents were regularly contacted throughout the assessment process and kept informed about progress; and
  - maintain files so that any contact between council officers, other professionals and parents was recorded and kept on file.

### The Ombudsman's view

2. The Ombudsman said there were unacceptable delays at almost every stage of the procedure. She highlighted two particular things about the council's processes which she thought required attention.
3. The first was that the council's procedures required authority from its executive director for any additional expenditure. That had the effect of routinely and significantly delaying the making of provision to meet children's assessed special educational needs.
4. The second issue was how the council dealt with seeking advice from National Health Service professionals. In this case, the advice from the community paediatrician was very late. The Ombudsman recognised that the council did not have any control over NHS professionals, but considered that the system for following up late responses was inadequate. There were no records to show whether the community paediatrician was contacted when he did not reply by the requested time. No

*(Report 02/C/2968)*

# B13: Special educational needs

Multiple failures in making suitable provision – inappropriate pressure on parents to agree to reduction in provision – statutory reviews – named person

Mr and Mrs Crystal complained that a council did not discharge its responsibilities to provide for the special educational needs of their son, Anthony.

## Special needs

1. Anthony was dyslexic and mildly dyspraxic. His difficulties affected his acquisition of literacy and numeracy skills. He had particular difficulties in the areas of writing and recording his work.
2. His statement of special educational needs, issued while he was at primary school, referred to the need for one hour of teaching a week from a specialist teacher; 12 hours a week help from a non-teaching assistant; and information technology support and appropriate alternative arrangements to record his work.
3. The Ombudsman accepted that Anthony was a boy who, given a modest level of educational support, was perfectly capable of keeping pace with his peers. He was entitled to that support and he did not get it. Without it he was, insofar as his schooling was concerned, critically disabled.

## Detailed complaints

4. The particular complaints by the parents included allegations that the council:
  - failed to ensure that Anthony's assessed needs were met;
  - failed repeatedly to give proper consideration to recommendations that his statement should be amended;
  - failed to respond to their request for a reassessment of Anthony's special educational needs;

- failed to advise them of their right of appeal;
  - failed to conduct statutory annual reviews properly;
  - failed to conduct the transitional review at age 14+, which was required by statute;
  - failed to advise them about a named person to give independent help and advice;
  - failed to respond in writing, or at all, to many of their letters of concern; and
  - failed to work in partnership with them, to liaise with them and to provide them with support.
5. The Ombudsman found that all these complaints were justified.

## Computer

6. The Ombudsman was particularly concerned that Anthony did not have the continuous use of a suitable computer on which to take classroom notes and to record his work.
7. He did not have a suitable computer for the first two years of his time in secondary school. Availability of a suitable computer after that was intermittent.

## Pressure on parents

8. At a meeting at the secondary school during Anthony's first term, Mr and Mrs Crystal asked about provision of a laptop computer. They told the Ombudsman that they were told that Anthony could have a laptop only if they were prepared to give up the provision

for dyslexia tuition and the 12 hours a week non-teaching assistant time. They said they were told that it would not be possible to have all three things.

9. The Ombudsman commented:

*“It is perfectly acceptable for a council to try to resolve differences with parents by negotiation. It is not acceptable, however, for anyone acting on behalf of a council to suggest to parents that they must choose one element of provision in the statement over others due to insufficient resources.”*

10. The Ombudsman said it was misguided of the school to try to bargain with the parents. And it was quite wrong of the council to accept the outcome. That was particularly so since the council had failed to provide the parents with advice about a named person, as required by law, who could give them information, help and independent advice.

11. A senior officer of the council told the Ombudsman that statutory statements of special educational needs were worded according to what was available. The Ombudsman commented:

*“Statements should not be worded according to what is available. The provision in a statement should match each identified need and councils have a duty to make resources available to meet the whole provision.”*

### Named person

12. The council had a responsibility to identify a named person when a statement was made. It failed to do so in this case.
13. The council said that it was difficult to find suitable people. But the

Ombudsman pointed out that the council did nothing to tell the parents about their entitlement to have this independent advice and support. The council could have suggested they contact organisations such as the British Dyslexia Association or the Independent Panel for Special Education Advice.

### Withdrawal from school

14. Mr and Mrs Crystal said that, by the time Anthony was in his fourth year of secondary education, he had become so depressed and demoralised that they felt they had to take some action to protect his mental and physical health. They withdrew him from school in order to educate him at home.
15. The Ombudsman considered whether this extreme action of withdrawing Anthony from school was a reasonable response for his parents to make in the situation in which they found themselves. She concluded that the parents had good reason to be concerned about Anthony's schooling and they had reason to feel they could no longer put their trust in the council. The council was responsible for putting Anthony and his family in an increasingly untenable situation and for ensuring that, deprived of appeal rights and with no independent source of advice, the parents were left with nowhere to turn. In the circumstances, withdrawal from school was not unreasonable.

### Outcome

16. The council agreed to pay compensation of £12,000 to Anthony and his family in recognition of its failure to support Anthony academically as it should have

done, and the financial and emotional hardship suffered by his parents.

17. The council also agreed to make a donation of £1,000 to the charity which had provided computer support for Anthony, and to reassess its policy towards children with statements of special educational needs in general and towards dyslexic and dyspraxic children in particular, and consider the quality and suitability of the computers it supplied for them.

18. In considering what compensation would be appropriate, the Ombudsman had regard to the substantial expenses incurred by the parents in supporting the education of Anthony at home and the sacrifices they made in order to do that, and also had regard to costs saved by the council in not making full provision for Anthony.

*(Report 01/C/5192)*

# B14: Special educational needs

## Speech and language therapy – staffing difficulties – failure to make provision required by statutory statement

Mr and Mrs Exe complained that a council failed to make appropriate provision for their son, David.

### Statutory statement

1. David had a language disorder. His language development was very delayed, resulting in severe difficulty at a basic level in using language for communication and social interaction. He had a statutory statement of special educational needs and attended a speech and language unit attached to a mainstream primary school.
2. The statutory statement required a structured language programme implemented on a daily basis with advice and input from a speech and language therapist, and intensive support from the speech and language therapy service.
3. Speech and language therapy was included as educational provision in the statement. The Ombudsman noted that, in those circumstances, it was the council's duty to ensure that it was provided, though the service was delivered by professionals employed by the National Health Service.

### Staffing difficulties

4. At the beginning of the Spring term 2000, David was doing individual or small group work with his class teacher, the class assistant, or the speech and language therapist.
5. The therapist then left. There were recruitment difficulties and a reduced level of support from a locum.

6. The Ombudsman noted that, at the beginning of 2000, David was receiving one individual session and four group sessions a week, making a total of some 60 speech and language sessions a term. But in the four terms after that he only received 12, 15, 8 and 10 sessions respectively.
7. The council claimed that the requirements of the statement were satisfied by the provision David received. The Ombudsman did not believe that was so. The Ombudsman found it hard to accept that, when David was receiving some 60 speech and language sessions a term, that was grossly in excess of what he needed. The only reason the Ombudsman could see for the subsequent reduction in the level of provision was staff shortages. The reduction had nothing to do with David's educational requirements.

### The need for action

8. The health authority made significant efforts to recruit staff and the Ombudsman recognised that initially it was understandable that the council did not think it appropriate to take specific steps itself. But after two terms, and complaints from the parents, the council should have known that it had defaulted on its statutory obligation to David, and that his educational opportunity and life chances were being potentially damaged by that failure.
9. It seemed to the Ombudsman that it was incumbent on the council at that stage to put in place provision which would make good what David had lost. That might have involved contracting with a

private therapist, or providing extra hours over and above those required by the statement once the unit was fully staffed. But the council could not wash its hands of its responsibilities, even though the problems arose in a service which the council did not itself run.

10. The Ombudsman found that David was deprived of valuable educational assistance he should have received, and the parents experienced anxiety and frustration, and expended time and trouble in trying to get the council to put matters right.

### Outcome

11. The Ombudsman recommended that the council should:

- pay for additional speech and language therapy to the value of £1,500, with the arrangements for doing that to be agreed with the parents;
- make an *ex gratia* payment of £500; and
- review its administrative arrangements.

*(Report 00/B/18517)*

# B15: Special educational needs

## Revision of statutory statement – delay – right of appeal

Mr and Mrs X complained about delay by a council in amending their son's statement of special educational needs.

### Delay

1. Mr and Mrs X brought forward proposals for significant changes to the statement. The council responded with a draft statement. There were substantial differences between the views of the council and those of Mr and Mrs X.
2. It was a long time before the council issued a final statement. That was significant because it was only when there was a final statement that the parents had a right of appeal to the Special Educational Needs Tribunal. The Ombudsman said that it was not unreasonable for there to be a period of negotiation over differences of view about provision, but that should not go on too long.

3. On the morning of the appeal the council agreed to the main changes to the statement which Mr and Mrs X wanted.
4. The Ombudsman considered that, in this case, there was an unreasonable delay of seven months by the council in issuing the final statement and thus triggering the right of appeal.

### Outcome

5. The council agreed to pay compensation which reflected the period of delay in Mr and Mrs X's son having the benefit of different and improved provision. The compensation amounted to £3,087.

*(Local settlement 01/B/16041)*

# B16: Transport

## Nature of route – discretion of council

Mrs Cook complained about a council's refusal to provide free home to school transport for her son, Daniel.

### The circumstances

1. When Daniel was due to transfer from primary to secondary school, Mrs Cook applied for free school transport for him.
2. The council refused to grant free transport. It said the distance from home to school was below three miles. Mrs Cook, however, argued that the route which the council had identified was not safe for Daniel to walk.
3. The council measured distances by means of a computer system. The system was programmed to include any lit, designated footpath.
4. The council told the Ombudsman that it could not make an assessment of the nature of the shortest route for every child attending a school in its area. It did not have the necessary resources. It decided that for the purposes of measuring walking distances to and from school, it would include all designated, lit footpaths.
5. A senior admissions officer of the council said that it was entirely a matter for parents to assess the suitability of any proposed route.

### The Ombudsman's view

6. The Ombudsman commented:  
*"This approach may have the advantage of simplicity, but it removed the council's discretion to take into account particular factors concerning the footpath and the child concerned."*
7. The Ombudsman did not consider that the council could distance itself from making a

judgement about safety. The council needed to take into account the steps outlined in the leading case of *R v Devon County Council* (1987) and consider the child, the nature of the route and whether the child could be accompanied or not.

8. The Ombudsman said that, in Mrs Cook's case, the council had not properly considered those matters. It had adopted a blanket approach which assumed that every single lit, designated footpath was a suitable route for any child of whatever age. So the council fettered its discretion to consider individual cases on their merits, and that was maladministration.
9. The Ombudsman thought it was reasonable that the council, as a first step, should use its computer measuring system to assess whether, on the face of it, free transport was appropriate. But once parents challenged the safety of any route the council had identified, the council needed to have in place a mechanism for properly considering a parent's objections in accordance with the tests suggested by the court.

### Outcome

10. The Ombudsman recommended that the council should put in place proper procedures, including a review mechanism, to comply with the tests suggested by the court; and then apply those tests to Mrs Cook's application.
11. If the result was that free school transport was given, then the council should reimburse the costs Mrs Cook had already incurred. In any event, the Ombudsman recommended the council to pay her £250 to reflect her time and trouble in pursuing her complaint with the council and with the Ombudsman.

(Report 01/B/5259)