



## Section A

# Education

A1-7	Admissions	4
A8-9	Exclusion	16
A10	Nursery education	18
A11-15	Special educational needs	19

# A1: Admissions

## Nature of criteria – conduct of appeal – panel membership

Ms Bishop and Mr Miller complained about their application and appeal for a place for their daughter Angela at a voluntary aided Church of England secondary school.

### Scope of complaint

1. The parents complained that the governors did not have objective admissions criteria which could be subject to effective scrutiny by the panel which considered their appeal against refusal of admission.
2. They also complained that the school did not explain the basis of the scores given under the admissions criteria, and did not give proper consideration to the membership of the appeal panel.
3. As a result of their complaint about the appeal, the Ombudsman suggested a second appeal should be arranged. This was done but there was a delay of three months in holding that second appeal.

### Admissions criteria

4. There were 50 foundation places a year for children from families who regularly attended the Church of England. There were 40 open places for those of another faith or none. Ms Bishop and Mr Miller applied for an open place.
5. For open places there were three criteria, and each applicant was given a number of points for each of those. The criteria were:
  - children of families who actively supported the aims, ethos and standards of the school;
  - applicants who would derive benefit of a pastoral nature from what the school could offer; and

- the distance between home and school and, so far as was relevant, the practicality and ease of the journey by public transport.

6. The Ombudsman said:

*"I recognise that the school is heavily oversubscribed, but do not consider that this justifies the use of admissions criteria which are not fair and objective."*

7. The Ombudsman noted that the governors had made changes to the criteria for the future. But the Ombudsman said the new criteria still did not make it clear to parents or members of appeal panels exactly how the points were to be awarded under each of the criteria. Even the newly revised criteria were not objective and transparent. The Ombudsman expressed the hope that the governors would carry out a further review and take into account his continuing concerns and the reasons for them.
8. The Ombudsman's particular concerns about the criteria and the handling of the application of Ms Bishop and Mr Miller were:
  - the three admissions criteria for open places were not objective or transparent and, as a result, the headmistress and her deputy had significant discretion over who was offered a place;
  - there was no written guidance on how the scores should be awarded on each criterion that would enable either the admissions committee or the appeal panel to satisfy themselves that the scoring by the headmistress and her deputy had been fair and objective; and
  - scores were awarded by the headmistress and her deputy on the

basis of a reference from the primary school headteacher that was not revealed to the parents or the appeal panel.

### Conduct of appeal

9. The Ombudsman was also concerned about the conduct of the appeal:
  - Before the appeals were heard, the headmistress discussed the policy and her approach to the scoring with the appeal panel privately and the parents did not have the opportunity to hear that statement.
  - The clerk to the appeal panel advised the panel that they should allow a maximum of only three appeals as, in his view, the school could only take that number of extra pupils, and the Ombudsman said that suggested that he was not always acting independently of the school.

### Appeal panel membership

10. The Ombudsman was concerned that:
  - the appeal panel chair had past connections with the school such that doubts might be raised in parents' minds over her ability to act impartially; and
  - the governors had not complied with the legal duty to advertise for lay members to serve on appeal panels, and the members of the appeal panel had often been the same people over a number of years.

### Second appeal

11. The Ombudsman said there was unreasonable delay in holding the second appeal.

### Injustice

12. The Ombudsman said:

*"The various faults with the appeals led to the parents' lack of confidence in the appeal process and the decisions reached. The delay in holding the second appeal also prolonged the anxiety and uncertainty about the outcome."*

### Remedy

13. The Ombudsman recommended that the governors should:
  - make a payment of £250 to the parents for their time and trouble in pursuing their complaint and for the prolonged uncertainty caused by the delayed second appeal hearing;
  - review their admission arrangements to ensure that they were objective, transparent and fair, bearing in mind the comments made by the Ombudsman;
  - review the membership and clerking arrangements for future appeal panels and advertise for new lay members; and
  - provide training for members of its appeal panels, their clerks and the schools admissions secretary on admissions and admissions appeals.

(Report 02/A/3544)

## A2: Admissions

### Admission arrangements not properly applied – child wrongly denied place – advice about appeal arrangements

Mrs A complained about the actions of the governors of a voluntary aided Roman Catholic primary school in considering her application for a place for her son, B.

#### Admission arrangements

1. Mrs A claimed that the governors did not properly apply their published admissions criteria in deciding which 30 children should be offered places in the reception class. She wished B to transfer to the reception class on completion of his nursery education at the school and said that, if the admission arrangements had been properly applied, B would have had a place.
2. Under the published admissions criteria, first priority was given to practising Roman Catholics resident in two defined parishes. Practice was defined as attending weekly mass and participating in the activities of the parish. Applications had to be supported by a priest's reference.
3. Mrs A was heavily involved in the activities of the parish. She thought it unlikely that there were 30 applications which met the first priority criterion, in particular because of the second part of the definition (participation in the activities of the parish). She herself had met the definition but did not live in the parishes defined and therefore the application for B fell within the second priority criterion, having a sibling already at the school. Mrs A thought that the governors might have had regard to mass attendance but ignored the part of the definition relating to the activities of the parish.

#### Investigation

4. Both the application form to be completed by the parent and the reference form to be completed by the priest included a question about participation in the activities of the parish.
5. The investigation showed that, of the 30 successful applicants, there were 22 where neither the parents nor the priest claimed that there was participation in the activities of the parish. It appeared therefore that only eight of the 30 admitted came properly within the first priority criterion. Of the unsuccessful applicants living in the defined parishes, there were only two where both the priest and the parents claimed participation in parish activities. So there should have been places available for applicants in the second priority.
6. B qualified within the second priority criterion. It was clear that the application for B would have succeeded if the admission arrangements had been properly applied.
7. The error was not corrected by the appeal process. In making her appeal, Mrs A made it clear that she was claiming that the admission arrangements were not properly applied and that B was wrongly denied a place.

#### Outcome

8. The Ombudsman invited the governors to settle the complaint by offering B a place. The governors agreed to do so.

### Appeal arrangements

9. The Ombudsman made a number of suggestions to the governors about aspects of the appeal arrangements that could usefully be reviewed.
10. The first was that the governors did not have a guidance document for parents on the subject of appeals. Parliament had given guidance that it was important that admission authorities should prepare such guidance documents. The Ombudsman suggested that this should be done.
11. Parents did not have an explanation in advance of how appeals were to be conducted when infant class size prejudice was involved, as was the case here. The Ombudsman pointed out that this was a technical area and it was important that parents should have such an explanation so that they knew how to prepare their appeal. In particular, there needed to be an explanation of the statutory grounds on which a panel could uphold an appeal where infant class size prejudice was involved.
12. The appeal form suggested four headings for a parent to make an appeal. The implication of that could be read as indicating that this was setting parameters for an appeal and that any other topic was excluded. The Ombudsman advised that there should be an indication that parents could put forward any other reasons they had which did not fall within the four headings.
13. The Ombudsman also referred to membership of the appeal panel. Parliamentary guidance particularly drew attention to the need to avoid including in the membership of a panel anyone who could be considered to have an interest in the outcome of the appeal. The example given was a governor of a school where children of the unsuccessful appellants might attend. The Ombudsman therefore suggested that it would be sensible to avoid having on the panel a governor of another local primary school. Similarly, it was advisable not to have a member of staff from a local primary school acting as clerk to the panel.
14. The Ombudsman emphasised that he did not wish the governors to think that there was any suggestion of improper action by any panel member or the clerk in relation to the appeals. It was a general point which was solely about the need for panels to be independent and to be plainly seen to be independent.

*(Local settlement 03/A/5866)*

# A3: Admissions

## Appeal panel membership – information for appellants

Mrs X complained about the handling of her application for a place for her daughter Y in an infant school.

defend the school. He proceeded to explain in some detail why he considered that the school would be perfectly suitable for Y.

### Unsatisfactory appeal

1. The Ombudsman found that the appeal about the refusal of the place was unsatisfactory in two respects. He considered that the fairest and quickest way to resolve the complaint was that Mrs X should be offered a fresh appeal with a new panel.
2. The council responded promptly to that suggestion and agreed to offer a fresh appeal. That was a very positive response which the Ombudsman greatly appreciated.

5. The Ombudsman said that this could not be right since it gave the impression of a complete lack of independence by the panel.

### Information for appellants

### Panel membership

3. The first respect in which the Ombudsman found the appeal unsatisfactory was that one member of the panel was a governor of another school in the area where, potentially, Y could have been offered a place (and in fact she was offered a place there). The *School admission appeals code of practice* issued by Parliament specifically advised against this.
4. The effect in this case was a good illustration of the problem. When Mrs X explained to the panel that she did not want a place for Y at the other school because of what she regarded as low standards and poor discipline, the panel member said that he was a governor of that particular school and wished to

6. The Ombudsman drew attention to the emphasis in the *Code of practice* on the importance of the case for the admissions authority in defending the appeal to be circulated in advance to parents. This was so that the panel and the parents could study the information in advance. Parents, for example, could then consider whether there were any questions they wanted to raise or points they wanted to challenge and how to conduct their case.
7. In this instance the information circulated by the council did not explain in detail why Mrs X's application was declined. The lowest category of the admissions criteria used was distance from the school, but the council did not give an explanation of what was the furthest distance away from the school to secure entrance that year, and what was the distance in Mrs X's case. Such information would have given Mrs X the opportunity to question the information if, for example, she thought the distance had been incorrectly measured. But in any event it would have been useful information for her in thinking about how to approach the appeal.

8. The information given in advance included nothing about class sizes. The Ombudsman commented:

*“That really is crucial information. I can see that the information was given orally at the hearing but the need for advance information is particularly so that parents can prepare their appeal. The information about class sizes is especially important because how a parent is going to conduct an argument could be affected. Arguing that one more child could be admitted to a class of 30 is an entirely different matter to arguing that one more child could be admitted to a class of, say, 25.”*

9. In this case class sizes were in fact 25. The authority’s statement referred to pressure on accommodation, but it was not clear what was meant by that. It was not clear whether the council meant that classrooms were smaller than normal, so that it was not reasonable to have more than 25 in a class, or whether there were other problems. The Ombudsman said this should have been made clear.

*(Local settlement 03/A/8840)*

# A4: Admissions

## Appeal – refusal to circulate documents admitted by appellant

Mr X complained about the way a council handled an appeal against refusal of admission for his daughter Y to an infant school.

### Second appeal

1. The circumstances were that there had been an earlier appeal which the Ombudsman found was unsatisfactory. It was therefore agreed by the council that Mr X would be offered a fresh appeal.
2. For the second appeal Mr X submitted as evidence the Ombudsman's letter commenting on the handling of his admission application and appeal. The council refused to circulate this to the appeal panel. Mr X was unhappy about that and also objected to the council providing documents to the panel which he thought inappropriate. These were letters from the council to the Ombudsman.
3. Because of this dispute the second appeal did not proceed and Mr X complained again to the Ombudsman.

### Approach to appeals

4. The Ombudsman commented:

*"It seems to me that the position in essence is very simple. In any appeal, and I do not think the situation here is any different, it is open to both parties to an appeal to put forward any evidence or documents they wish. It would then be up to the panel to decide what weight, if any, to give to any particular evidence. Or indeed, it would be open to the panel, having heard what both parties had to say at the hearing, to say that there was some evidence they did not regard as relevant, with reasons for their view."*

5. The Ombudsman said that, if in the new appeal Mr X wished to put forward the Ombudsman's letter as evidence in support of some particular point or points he wanted to make, then it was the duty of the appeal panel clerk to circulate that in advance to the panel members in the usual way. Similarly, it would be open to the council to ask for any evidence it wished to put forward to be circulated. On that point the Ombudsman did not support Mr X's criticism and said that the council could submit any evidence it liked. It would then be open to Mr X to comment on that evidence and it would be for the panel to judge what weight, if any, it wished to give to it.

### Outcome

6. The council agreed that what the Ombudsman said was a fair statement of the position, and agreed that Mr X could put in as evidence the Ombudsman's previous letter.
7. This was a satisfactory resolution of the complaint and the Ombudsman advised Mr X that he could now proceed with the second appeal if he still wished to do so.

*(Local settlement 03/A/5790)*

# A5: Admissions

## Appeal panel had no clerk – faith commitment – conflict in information

Mr A complained about an appeal panel's refusal to grant his appeal for a place for his daughter at a Church of England voluntary aided school.

### Clerk

1. The appeal panel had no clerk. Arrangements had been made for a clerk but in the event the person was not able to attend. The chair of the panel decided to hear the various appeals without a clerk.
2. The *School admission appeals code of practice* stated that a panel had to have the services of a clerk. The Ombudsman said that the absence of the clerk was a clear breach of the code which amounted to maladministration.

### Admission arrangements

3. The admissions criteria allowed for points to be awarded to reflect the degree of faith commitment of a family. A maximum of 10 points could be awarded on the basis of the reference provided by the relevant minister in the case of Christian denominations. A maximum of five points could be awarded on the basis of a reference by the relevant leader in the case of other faiths.
4. Mr A's daughter was awarded two points and that was not sufficient for her to be given a place. Mr A did not believe that two points accurately reflected his family's commitment. The published arrangement stated that two points would be awarded in situations of "recent attendance only, within the last 12 months". Mr A decided to appeal and obtained a further reference from the imam at the mosque attended by his family.

5. At the appeal hearing, Mr A stated that his family had a long association with the local mosque, his grandfather having been a founding member. His daughter regularly attended prayers and religious studies. He produced the further reference he had obtained, which confirmed what he said.

6. Panel members noted the new information provided by Mr A. They noted that there was a contradiction between the evidence provided by the original reference and that contained in the second reference. But the panel members felt they should not question the score based on the original reference.

### The Ombudsman's view

7. The Ombudsman took the view that a properly trained clerk would not have allowed the apparent contradiction in the information before the panel to remain unresolved. He accepted that it was proper for the panel to accept references provided by faith leaders at face value, but where there was information which suggested that the score attributed to a particular child was not an accurate reflection of the family's involvement in the faith community, the panel should have reached its own conclusion. The panel's failure was maladministration.
8. The Ombudsman believed that the difficulty could have been avoided if the appeals panel had been properly advised by an experienced clerk.

### Outcome

9. The Ombudsman asked the admission authority to admit Mr A's daughter. That request was agreed.

(Local settlement 03/B/1778)

# A6: Admissions

## Evidence of prejudice – approach to balancing stage of appeal

Mr X complained about the way a council's admissions appeal panel dealt with his appeal against the council's refusal to award his son a place in the secondary school he preferred.

### Concern about appeal

1. The Ombudsman was concerned about two aspects of the way the appeal panel members approached their task.

### Prejudice

2. The Ombudsman was concerned that panel members were not sufficiently rigorous in testing the admission authority's case that additional admissions would cause prejudice to efficient education or the efficient use of resources.
3. One panel member at interview said that he had taken the view that, if a school had admitted pupils up to its published admission limit, the school was full. But the *School admission appeals code of practice* issued by Parliament expressly advised that it was not enough for the admission authority to demonstrate that the admission number had been reached. The admission authority had to demonstrate what prejudice would be caused by additional admissions.
4. One panel member at interview said that what the panel had to consider was whether the school could admit all the children whose parents were appealing. The Ombudsman pointed out that this was neither correct nor logical. The panel had to decide whether to admit one or more children would cause prejudice. It was not appropriate for the panel to consider only whether the

admission of all the children would cause prejudice.

5. Another panel member said that the panel knew from the start before any appeals were heard that the school was full. He pointed out that it was a well known fact that the school was oversubscribed each year and that was published in the local press. The Ombudsman pointed out that natural justice required that the decision of the panel had to be based on the evidence presented, including evidence presented by parents who were appealing. The decision could not be either wholly or partly based on the local knowledge or opinions of the panel members.

### Balancing stage

6. The appeals process required that if the panel was satisfied that the admission of additional children would cause prejudice, the panel had to go on to consider whether the strength of any of the parental cases was such as to outweigh the prejudice. This was a process commonly known as the balancing stage of the appeal. The Ombudsman was concerned that panel members placed far too much weight on the admissions criteria at the balancing stage. One member said he would have difficulty allowing any appeal if it did not fall into one of the top three categories of the published admissions criteria.
7. The Ombudsman pointed out that it was proper and indeed necessary for the panel to take the published criteria into account, but they also had to take full account of any arguments presented by parents. The Ombudsman was also concerned that the panel did not take into account certain parental arguments

at the balancing stage. In the case of Mr X it was clear that the panel did not take into account his point about transport problems or about domestic inconvenience. The Ombudsman commented:

*“All parental arguments (irrespective of whether they refer to problems of the parents or of the children) must be taken into account and weighed against the prejudice to be overcome.”*

8. The Ombudsman was also concerned that panels were unduly concerned about the setting of precedents, and that this was inhibiting them from determining each appeal on its merits. Two members of the panel expressed concern that allowing Mr X’s appeal would have set a precedent in relation to children with dyspraxia; the clerk expressed a similar concern. The clerk was also concerned about setting a precedent in relation to child-minding problems. The Ombudsman pointed out

that appeal panel decisions on individual appeals did not set precedents which in any way bound future panels, and that each appeal had to be considered on its merits.

### Outcome

9. At the Ombudsman’s suggestion the council agreed:
  - to arrange a new appeal for Mr X with a different appeal panel; and
  - to advise those panel members, other members used by the council for appeal hearings, and all relevant officers of the advice and concerns which the Ombudsman had conveyed.

*(Local settlement 03/C/2106)*

# A7: Admissions

## When entitlement to appeal arises – reasons for refusal of place

Mrs A complained about a council's delay in arranging an appeal against a refusal of a place in her preferred school.

was clear that a parent whose child was refused a place at a school had the right to appeal.

### Timing

1. Mrs A's son was due to transfer from primary to secondary school. In March the council told her that it could not offer a place in her preferred school. Mrs A wished to appeal, but the council said it could not arrange an appeal at that stage because the situation could change and it might prove possible to offer a place for her son if some of the offered places were not taken up.
2. The council did not arrange an appeal until mid June. Mrs A considered this was unreasonable and she should have been able to pursue her appeal following the decision in March.

5. It was clear to the Ombudsman that, when the council wrote to Mrs A in March, her application had been considered and a decision made that a place could not be offered. The Ombudsman did not consider that the fact that there might be some movement and further offers made later was relevant. That was always the position with secondary school admissions throughout the summer months. Even after what the council deemed to be a final decision, there would still be pupil movement in the normal course of events and further offers would then be made.
6. In view of this, the Ombudsman considered the council was at fault in delaying the appeal.

### The Ombudsman's view

3. The council told the Ombudsman that in March it had only made a provisional decision, not a final one. However, the fact remained that a decision to refuse a place had been made. The refusal letter stated that it was not possible to offer a place at that stage, but the child's name would be on the waiting list. When the council wrote later with what it described as its final decision the letter stated exactly the same thing.
4. The Ombudsman pointed out that the relevant statutory provision was that an education authority had a duty to arrange an appeal in respect of any decision made by or on behalf of the authority as to the school at which education was to be provided for the child. The statutory guidance, moreover,

### Reasons for refusal

7. The Ombudsman also pointed out that the guidance stated that a letter refusing an application for a place should explain the reasons for that decision as well as giving details of the right of appeal. Part of the council's argument for not providing for an appeal at that stage was that in the first letter the council did not put forward any clear grounds for refusing admission. But the subsequent letter did not set out the reasons for refusal either.
8. The Ombudsman said that parents were placed in a difficulty in considering whether to make an appeal, and if so on what grounds, if they did not know the reasons why their application had been refused.

### **Outcome**

9. The council agreed to revise its arrangements, to include reasons in letters refusing admission, and to pay compensation of £150 to Mrs A for her distress and her time and trouble in pursuing the complaint.

*(Local settlement 03/A/4860)*

# A8: Exclusion

## Fixed term exclusion – pupil not allowed to return to school – whether council responsible for tuition

Mrs A complained about the way a council dealt with the education of her son B following his exclusion from secondary school.

### What happened

1. B was in year 10 at secondary school. He was excluded from school for a fixed term of 15 days.
2. The headteacher did not feel able to allow B to return to school normally after the exclusion, because of threatened industrial action by teachers. The headteacher arranged individual tuition for B for half a day a week.
3. Mrs A complained to the governors. The governors accepted that the tuition was insufficient. The governors also accepted that it was unsatisfactory that there were no backup arrangements and there was no tuition at all when the teacher was absent.
4. As a result the arrangements for individual tuition were increased, but they were sporadic and fell well below the equivalent of full-time education. This situation continued for eight months before B returned to school after a special educational needs assessment. The council agreed to an additional 15 hours a week teacher support or 27 hours learning support assistance or a combination of both.

### Jurisdiction

5. The actions of the school were not within the Ombudsman's jurisdiction. The Ombudsman was concerned with the actions of the council.

### The council's view

6. The council said that, as B was on the school roll, the council had no duty to arrange tuition.

### The Ombudsman's view

7. The Ombudsman pointed out that, since B was not allowed to return to the school, he effectively had no school place. The council should have intervened sooner than it did to ensure that B received appropriate provision. The council should have arranged individual tuition itself when it was clear the school was not providing this.
8. The Ombudsman concluded that the council failed to ensure that B was receiving appropriate education after the expiry of the fixed term exclusion. It should have been clear to the council that B was not being provided with an effective education by the school, and the council allowed this unsatisfactory situation to continue for much longer than necessary. The fact that B was on the school roll should not have been a reason for the council to delay taking action.

### Outcome

9. The Ombudsman took into account the difficulties facing the council in this situation, and the difficulties in finding tutors at some stages. In all the circumstances the Ombudsman considered that compensation of £2,750 was appropriate. The council agreed to make that payment.

*(Local settlement 02/A/14108)*

# A9: Exclusion

## Special educational needs – delay in statutory process – provision of suitable education following exclusion

Mr Marshall complained that a council failed to make appropriate educational provision for his son.

### Special educational needs

1. Mr Marshall's son, Lee, was a pupil in a primary school. The council initiated a statutory assessment of his special educational needs.
2. The council took nine months longer than the timescale laid down in legislation. The Ombudsman said the delay was excessive and amounted to maladministration.

### Exclusion

3. Part way through the process, Lee was permanently excluded from his primary school because of his violent and disruptive behaviour.
4. Lee was out of school for four-and-a-half terms. The Ombudsman pointed out that there was a clear statutory requirement for the council to make suitable educational provision, at school or otherwise, for children of compulsory school age who had been excluded from school. It was also clear that such education had to be efficient education suitable to the child's age, ability, aptitude and any special educational needs he or she might have.
5. The Ombudsman pointed out that government guidance was that education for excluded pupils should be suitable full-time education. Councils were expected to work towards achieving that requirement by September 2002. The Government advised that full-time education should mean 25 hours a week.

6. Lee's time out of school was before September 2002. He received no education for around half a term following his exclusion and after that he received tuition which varied between six and 12 hours a week.

7. The council accepted that Lee had specialised needs that could not be met solely by the student support unit where he was placed. The provision he received was a long way short of the target of 25 hours a week that the council was working towards for September 2002. The Ombudsman could not accept that, for the period Lee was out of school, the number of hours tuition he received could be described as 'suitable education'. That was maladministration and it caused the injustice that Lee received poorer educational provision than that to which he was entitled for a period of four-and-a-half terms.

### Outcome

8. The Ombudsman recommended that the council should, in agreement with Mr Marshall, make an investment in Lee's education to the value of £2,250, and pay Mr Marshall a further £250 in recognition of his time and trouble in pursuing the complaint.
9. The Ombudsman also recommended that the council should review the adequacy of the resources of its student support unit to satisfy itself that it could meet its statutory duties.

*(Report 01/B/6663)*

# A10: Nursery education

## Free places advertised – change of arrangement

Two parents complained separately about a leaflet issued by a council indicating that nursery education for their children would be free. In the event, it was not.

### What happened

1. The council produced a leaflet for the public and this was made available in April 2002. It included the statement:  
  
“Where places are available, three-year-olds (in the area) are entitled to free nursery education for up to five 2½ hour sessions per week for 11 weeks each term from April 2002.”
2. Mr Stabler said that, relying on the information in the leaflet, he contracted for a place in a local nursery school.
3. Ms Bridge said that she took up a part-time teaching appointment after carefully carrying out a budgeting exercise based on the information in the leaflet. She said that the failure of the council to fund her daughter’s nursery place caused her severe financial hardship.
4. The council had originally expected that there would be sufficient funds available from government grant to fund free places for all three-year-olds in the area. The take-up of places turned out to be much larger than anticipated. In respect of children starting in January 2003, the council later decided that the places would not be free. Mr Stabler and Ms Bridge found that out in the month before their children were due to start. Later, funding did become available for the following term, the summer term 2003.

### The Ombudsman’s view

5. The Ombudsman said that the council’s leaflet would not lead any parent to

doubt, subject to the availability of places, that the council would fund nursery education and there would be no charge to the parents. The council’s view was based on an estimate and not a certainty and the council should have recognised that and qualified its advice accordingly. The failure to do so was maladministration.

6. That failure denied opportunities for parents to take fully-informed decisions at the proper time on issues affecting their families.

### Injustice

7. In the case of Mr Stabler, the Ombudsman said he knew before taking up the nursery place that he could withdraw. The injustice was limited in that case and the Ombudsman recommend only a small amount of compensation (£50).
8. In the case of Ms Bridge, in practice it would have been much more difficult for her to change her plans once she found out that the place would not be funded. For her the Ombudsman recommended compensation of £250.

### General issue

9. The Ombudsman commented:  
  
*“There is an important point of principle here. If a council knows (or should know) that some public provision is uncertain then it should always alert the public to that possibility as soon as possible. Injustice here is limited but there may be other more significant cases, and more generally the potential for serious injustice from this type of failure cannot be ruled out.”*

*(Report 02/C/14766 et al)*

# A11: Special educational needs

## Assessment requests ignored – severe delays – child with significant needs – complaint to council

Mr and Mrs Grey complained about the way a council dealt with their son's special educational needs.

### Assessment request

1. Mr and Mrs Grey were concerned about their son, Joseph, while he was in primary school. He was seen by a consultant paediatrician and a clinical psychologist. A clinical medical officer then made a direct request to the council for him to be assessed as having special educational needs.
2. Over the next two years further requests for assessment were made to the council from the primary school, a hospital school and health professionals. The council failed to respond to any of those requests and it took no action.
3. The Ombudsman found no evidence that information about their statutory rights to request an assessment was given to Mr and Mrs Grey by the council, or that the council made any attempt to work in partnership with them.
4. Joseph was admitted to hospital at the age of 10 suffering from clinical depression following bullying in school. Despite this, the council still took no action for six months.
5. A council psychologist did then prepare a report. But the Ombudsman said it was clear that the report was prepared without proper consultation with all relevant parties and was fatally flawed. It did not mention bullying, Joseph's history of depression or the fact that he had been diagnosed as having Asperger's syndrome.

### Assessment

6. Eventually the council started a statutory assessment. But it was nine months before a statutory statement was issued. It then took the council a further six months to arrange an appropriate place in a school for Joseph.

### Outcome

7. At the time of making her report, the Ombudsman was pleased to note that Joseph was receiving proper support and was making excellent progress in his new school.
8. The council accepted that its dealings with Joseph fell short of what was required. It agreed to pay Mr and Mrs Grey £3,000 compensation for the distress and frustration caused to them by the council's failures, and £5,000 to be used for Joseph's benefit.
9. The council also agreed to reimburse Mr and Mrs Grey's legal costs. This was because Mrs Grey had made a complaint to the council about what happened. The letter was on the council's files but the Ombudsman saw no evidence that it was acknowledged or responded to. It was because of the lack of response that Mrs Grey instructed a solicitor to act for her.

*(Report 02/C/2543)*

# A12: Special educational needs

## Transfer to secondary school – delay in issue of statement

Mr and Mrs Smith complained about the way a council arranged for the transfer of their daughter Julie from primary to secondary school.

April and ordered school C to be named on the statement. There was then a further delay until Julie started school, one full year after the time when she should have started.

### What happened

1. Julie had physical disabilities and learning difficulties and she had no verbal speech. She attended a local primary school (school A) with support. She had a statement of special educational needs.
2. The council suggested that Julie should transfer to school B, a local secondary school with a special unit. Mr and Mrs Smith had reservations about the school's ability to meet Julie's needs and started to look at schools in the areas of neighbouring authorities. They decided they preferred school C, a special school.
3. The council delayed in carrying out the reassessment of Julie's needs which Mr and Mrs Smith requested. The council also delayed in producing a new statement naming school B. This was not issued until the beginning of November, after the start of the school year.
4. Mr and Mrs Smith appealed. In the meantime the council arranged a place for Julie in school B. Mr and Mrs Smith were prepared to accept this on an interim basis, while their preferred placement was finalised.
5. Mr and Mrs Smith took Julie to school B at the beginning of autumn term but the school did not seem ready to receive her. So Mrs Smith educated Julie at home.
6. The Special Educational Needs and Disability Tribunal upheld the appeal in

### Delay

7. The Ombudsman noted that the council failed to complete the reassessment of needs within the statutory period. The council also failed to issue a statement in reasonable time so that Mr and Mrs Smith could, if they wished, appeal and have their appeal determined in good time for the start of autumn term.
8. The Ombudsman pointed out that since these events, regulations had been introduced which required councils to complete the process of issuing new statements by mid February for all children who were transferring to secondary school. The Ombudsman hoped the council would review its procedures to ensure that it met this new deadline.
9. The Ombudsman recognised that Mr and Mrs Smith themselves made some contribution to the delay. Although they explained to the council what they were considering, they did not specify a particular school when invited to do so in the January before transfer. The Ombudsman recognised that this was possibly because they were confused by mixed messages they received from the council. One officer was inviting them to express a preference. Another was saying that the council could not consider their preference until it agreed the details of educational provision to be included in the statement.

## Remedy

10. Julie was out of school for a year and did not get the therapy she needed. The Ombudsman recommended that the council should pay Mr and Mrs Smith £2,000 to compensate them and Julie for the schooling she missed. In view of the council's delay in issuing a new statement prior to secondary transfer, it was not unreasonable for Mr and Mrs Smith to have sought professional help. So the Ombudsman also recommended that the council should pay £750 towards their legal costs.

*(Report 03/B/1770)*

# A13: Special educational needs

## Transfer from primary to secondary school – delay – child out of school

Mr and Mrs X complained about the way a council handled arrangements for the transfer of their son Y from primary to secondary school.

### What happened

1. Y had a statement of special educational needs. He had severe physical disabilities due to cerebral palsy.
2. The council was responsible for updating Y's statement to show which secondary school he should attend. Mr and Mrs X told the council in the December prior to the transfer date that they would like Y to attend school A, which was an independent school some way from the family home and where Y could have a residential place. School A confirmed that it could admit Y. However, the council did not begin assessing suitable placements for Y until April.
3. Y attended an assessment at school B, a day school. The council told Mr and Mrs X in mid July that the council would name school B on the draft amended statement. Mr and Mrs X had made it clear to the council that they would not send Y to school B because they did not consider it suitable.
4. The council issued the draft amended statement in mid August. The statement named school B. There was discussion between Mr and Mrs X and the council but no agreement was reached and the council issued a final statement on 4 October. That was after Y should have started at secondary school.
5. Mr and Mrs X appealed to the Special Educational Needs and Disability Tribunal and asked that school A should be named on the statement. Just before the appeal was to be heard, the council agreed to amend the statement to name a boarding place at school A. Y promptly started at the school but that was two terms after he should have started his secondary education.
6. In the meantime Y did not attend school for two terms. The council maintained that school B was suitable for Y so he should attend there pending the appeal. Mr and Mrs X refused to send Y to school B since they believed it could not meet his needs and that the daily travelling would be bad for him.
7. Mr and Mrs X told the Ombudsman that Y suffered educationally as a result of being out of school for two terms. Also his physical development was slowed down by not having the amount of physiotherapy he would have had at school A. They themselves suffered considerable stress and anxiety dealing with Y's demanding needs at home.

### Delay

8. The Ombudsman pointed out that the council was clearly aware that Y would be leaving primary school. As there was always the possibility of a disagreement between the council and the parents, it was important that the council should issue the revised statement in good time so as to allow for any appeal to settle which secondary school Y should attend

before the start of the September term. The Ombudsman considered that for the council only to issue the draft amended statement in mid August and the final statement at the beginning of October indicated a wholly unreasonable delay and was maladministration.

### What should have happened

9. The Ombudsman considered that the council could and should have issued a revised statement during the spring term preceding the time for transfer to secondary school. If the council had done that, Mr and Mrs X would have appealed against the naming of school B. There were five months between the issue of the final statement and the council's decision to agree to fund a boarding place at school A. The Ombudsman was satisfied that, if the process had been started earlier, the decision to fund a place at school A would have been reached before the start of the term in September.
10. The Ombudsman considered the council's argument that Y could have attended school B pending the appeal. However, that would have involved travelling every day, whereas the council agreed before the appeal took place that Y needed a boarding place. In the circumstances, the Ombudsman said that the refusal of Mr and Mrs X to send Y to a day place was not unreasonable.

Therefore the council's delay resulted in Y not only missing two terms of education at school A, but being without any education at all. That was a significant injustice.

11. The Ombudsman considered that the council should have provided home tuition for Y. The council's reason for not doing so was its assertion that school B was suitable. However that position was wrong, as the council had acknowledged just before the appeal.

### Outcome

12. The Ombudsman welcomed the willingness of the council to settle the complaint. The council agreed to pay Mr and Mrs X £2,500. The Ombudsman considered that a fair and satisfactory remedy.

*(Local settlement 02/B/11771)*

# A14: Special educational needs

## New arrivals in area – failure to meet legal duties – procedural changes

Mr and Mrs Scott complained that a council did not make proper provision for their two children after they came to live in the council's area.

### What happened

1. The family moved to the council's area and the parents told the council their two sons had statements of special educational needs. Both boys had a history of behavioural difficulties requiring a high degree of individual support in mainstream schools.
2. The council did not arrange any education at all for the two boys for a year. The Ombudsman found that this was because of various factors including staff illness, the council putting the onus on the parents to find a school place, lengthy negotiations with schools about taking the boys, and prolonged periods of inactivity.
3. The Ombudsman said that the council completely failed to carry out its legal duty. That was maladministration which caused injustice to the whole family. Mrs Scott had disabilities and significant health problems. Those factors magnified what would, in any event, have been the considerable pressure of having to cope all day every day with two boys with behavioural problems.
5. Under new procedures, a child arriving from another area with a statutory statement would immediately be referred either for home teaching or for education provided by the behaviour support service. The council recognised that the responsibility for finding a school rested with the council and not with the parents.
6. A child's circumstances would be considered by a special educational needs provision panel which met weekly. An appropriate school would be identified by the panel and as necessary officers would visit the school to negotiate arrangements. Usually the council would look for a phased introduction, both for the child's benefit and to reassure the school.
7. The council had introduced computerised record keeping which included a task list for each special needs assessment officer. If an officer was away from work, the manager responsible would be able to access the records and establish what needed to be done in each case. The council was also providing funding for additional posts.

### Outcome for the family

### Review of arrangements

4. The council accepted that it had not dealt with the family appropriately. It said the problems arose because of organisational failings within the special needs division. These failings were addressed as part of a reorganisation.
8. The council accepted that the boys' needs had not been met and indicated a willingness to provide an appropriate remedy. The council agreed that the boys' needs would be reassessed and any additional needs arising out of the lack of any education for a year would be provided for.
9. The council also agreed to pay Mr and Mrs Scott £8,000 compensation.

*(Report 02/C/16794)*

# A15: Special educational needs

## Appeal rights – provision specified in statement

Mrs A complained about the way a council dealt with the special educational needs of her daughter, B.

### Assessment

1. Mrs A complained about her request for a statutory assessment of B's special educational needs. The council decided not to undertake an assessment but did not tell Mrs A of its decision. Therefore, the council did not inform her that she had a right of appeal against the decision.
2. The Ombudsman found that the complaint was justified. At first the council argued that the failure caused no injustice to B.
3. The Ombudsman accepted the council's argument that it was not possible to say with any certainty what the outcome might have been if the fault had not occurred. However, the Ombudsman took the view that a denied opportunity to appeal was an injustice in itself. The Ombudsman also considered that, if Mrs A had been informed of her right to appeal and had appealed, some of the evidence which later became available to the council might have become available sooner.
4. Altogether the Ombudsman considered that B had been caused an injustice by the council's failure. The council accepted that.

### Provision

5. The council did later carry out an assessment of B and made a statement of her special educational needs. The statement specified provision of a support worker. However, there was a delay of some six months before the support was available.
6. The Ombudsman recognised that there were some recruitment difficulties. However, he did not think the council did sufficient to ensure that the special educational provision was made. Also the council did not respond to concern expressed by both Mrs A and a consultant psychiatrist.

### Outcome

7. The Ombudsman took into account the practical difficulties and asked the council to make a payment of £600 compensation. The council agreed to do this.

*(Local settlement 02/A/13068)*

