

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
West Sussex County Council
(reference number: 17 008 448)**

23 October 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs X	The complainant
Y	Her daughter
Officer B	Pupil Entitlement Investigating Officer

Report summary

Education Council: Attendance and Alternative Provision

Mrs X complains that the Council failed to provide appropriate support and education for her daughter when she refused to go to school because of high levels of anxiety, but instead took action against her for non-attendance.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend that to remedy the injustice to the family the Council should take the following action.

- Apologise to Mr and Mrs X for not fully considering alternative approaches to ensuring an education for their daughter from April to July 2017.
- Pay them £400 to recognise the loss of educational opportunity during this period, to be used for the benefit of Y's education.
- Remind relevant staff that the duty to provide alternative education may arise for reasons other than exclusion and illness.

The complaint

1. Mrs X complains that the Council failed to provide appropriate support when her daughter started refusing to go to school because of high levels of anxiety. Instead the Council decided to take action against her for non-attendance. She says the Council did not take proper account of the medical evidence she provided or her efforts to get her daughter to school, and failed to ensure her daughter received suitable education when she was out of school.

Legal and administrative background

Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

Education for children out of school

3. Parents have a duty to ensure their children of compulsory school age are receiving suitable full-time education. (*Education Act 1996 section 7*)
4. A council may take action against parents where it is not satisfied their child is receiving suitable education and it considers the child should be attending school. The council may prosecute the parents. Before doing so it must consider whether to apply to the courts for an Education Supervision Order instead. It is a defence to a prosecution that the child's absence is due to sickness or 'unavoidable cause'. (*Education Act 1996, sections 437-447*)
5. The Government introduced a fast track procedure for enforcing school attendance. In its leaflet '*Prosecution – A Guide for Parents*' the Council explains the process as follows:

"Under the Fast Track procedure, you have up to 12 weeks to ensure your child is attending school regularly and punctually. You will receive a summons to appear at court. If attendance has sufficiently improved by the time of the court hearing then the prosecution against you will be withdrawn. If attendance has not improved to a satisfactory level then the prosecution against you will continue."

6. The Council has an Integrated Prevention and Earliest Help team which considers what support to offer to families. There are four levels of support offered according to assessed needs: 'universal', 'early help', 'targeted' and 'specialist'. There is a Forum, known as either the Early Help Forum or the Family Support Network Forum, where schools may refer cases of concern to discuss with the Council to see if they are suitable for extra support. Cases are referred where they are likely to need 'targeted' support at level three or above.
7. Councils have a duty to make arrangements for the provision of suitable education at school or elsewhere for children of compulsory school age who, "by reason of illness, exclusion from school or otherwise may not for any period receive suitable education unless arrangements are made for them". (*Education Act 1996, section 19*)

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8. Statutory guidance '*Alternative Provision*' says this duty applies "to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend".
 9. Statutory guidance '*Ensuring a good education for children who cannot attend school because of health needs*' says in considering alternative education local authorities should not:
 - have processes or policies in place which prevent a child from getting the right type of provision and a good education; and
 - have inflexible policies which result in children going without suitable full-time education (or as much education as their health condition allows them to participate in).
 10. We issued a Focus Report in September 2011 amended in June 2016, '[Out of school...out of mind?](#)'. This gives guidance for local authorities on how we expect them to fulfil their responsibilities to provide education for children who, for whatever reason, do not attend school full-time. The report made six recommendations based on examples of good practice seen. It said councils should:
 - consider the individual circumstances of each case and be aware that a council may need to act whatever the reason for absence (with the exception of minor issues that schools deal with on a day-to-day basis) even when a child is on a school roll;
 - consult all the professionals involved in a child's education and welfare, taking account of the evidence in coming to decisions;
 - choose, based on all the evidence, whether to enforce attendance or provide the child with suitable alternative education;
 - keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases;
 - adopt a strategic and planned approach to reintegrating children into mainstream education where they are able to do so; and
 - put whatever action is chosen into practice without delay to ensure the child is back in education as soon as possible.
 11. The Council's alternative education provision is made through the West Sussex Alternative Education College. This has a Blended Learning Team that can support distance learning at home.

How we considered this complaint

12. We produced this report after examining relevant documents and discussing the complaint with the complainant and the Council. We have decided to issue the report because the Council has not agreed to our recommendations.
13. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
14. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

What we found

What happened

15. Mr and Mrs X have a daughter, Y, now aged 15. Y started refusing to go to school at times during the 2015-2016 school year. By September 2016 her attendance had dropped below 60% and she was displaying hostile and aggressive behaviour towards her parents at home. Mr and Mrs X discussed the situation with Y's school ('the School'), including with its Student Welfare Officer. The School had not been able to establish that Y had any concerns about anything that happened in school. It referred Y to the school counsellor. The School also advised Mr and Mrs X about contacting the Youth Emotional Support (YES) service, attending a course on understanding teenage behaviour, and discussing issues with Y's GP. The School explained that in order to authorise absence on medical grounds it would need medical evidence.
16. The School's Welfare Officer carried out an assessment with Mr and Mrs X under the Council's Early Help procedures. The report of the assessment notes Y was reluctant to accept help offered and had still not raised any specific concerns about school. It noted Mr and Mrs X were engaging well with the School and looking into the support recommended. The action agreed was to explore the reasons for Y's school refusal and support the family "in preparation for the first Team around the Family meeting".
17. When Y's attendance did not improve and she did not engage with the support offered, the School made a referral to the Council's Pupil Entitlement service in mid-October 2016, after advising Mr and Mrs X it would do so. In the referral information the Welfare Officer said she was taking the case to the Forum in October. The referral noted:

"although [Y] has been warned numerous times about a potential referral, parents believe that until the school referral letter is shown to [Y], she will not take the matter seriously and continue school refusing."
18. The Council allocated the case to a Pupil Entitlement Investigating Officer ('Officer B') who sent a warning letter to Mr and Mrs X about Y's non-attendance. The letter explained the Council could decide to prosecute them or seek an Education Supervision Order unless there was an immediate improvement in Y's attendance. It ended by inviting them to contact the Officer if they wanted to discuss any issues relating to their child's attendance.
19. Mr and Mrs X continued to discuss issues with the School, and Y continued to refuse to see those offering support, including the school nurse, school counsellor, and the YES worker.
20. Officer B visited the family at home at the end of November 2016. Y refused to speak to her and left the room. The Officer explained parents' duties to Mr and Mrs X and the legal process if attendance did not improve. She said she would monitor Y's attendance. In her assessment following the visit, Officer B recorded that the parents agreed they would continue to work with their daughter to get her to attend by gradually increasing the amount of time spent in school.
21. Over the next few months Mr and Mrs X continued to correspond with the School. The School kept Officer B updated. Mrs X told the School how frustrating she found it dealing with a child who was obviously suffering from high levels of anxiety but who would not recognise this herself and refused all help.

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22. In January 2017 Y agreed to see her GP and Mrs X reported that the doctor had found a physical medical problem. The School explained that to authorise absence on medical grounds it would need medical evidence showing the reason Y could not attend school. The School also suggested it might be helpful to set up a medical care plan with the GP to support Y in school. The School reported to the Council that it was still not clear whether Y had a medical condition which affected her ability to attend school.
 23. Y's attendance was still poor during the spring term. In February 2017 she stopped attending altogether. In early February 2017 Mrs X asked the School what had happened about the proposed referral to the Early Help Forum. The School's Welfare Officer advised the case had not gone to the Forum previously because the family had taken up the support offered and there was nothing more to offer at that time. Since then, however, Y had refused to see the mental health support worker. The Welfare Officer suggested asking Mrs X what extra support she was looking for and said she would check when the Forum could next consider the case.
 24. Officer B presented the Pupil Entitlement service case to the Legal Panel in mid-February 2017. She recommended legal action as she considered non-attendance had continued without any supporting evidence to authorise the absence. The Panel noted some improvement in attendance after the service became involved. It also noted Mr and Mrs X were willing to engage in the support offered and had asked about further support from the School. The Panel recommended that Officer B should speak to the School about taking the family's case to the Family Support Network as this has been discussed in the past, but had not actually happened. The Panel decided to support the recommendation to start fast track proceedings.
 25. In early March 2017 Mr and Mrs X were still seeking support from the School with getting Y into school and asked for a meeting with the School and Officer B. The School confirmed it would be happy to have a meeting but again advised it would be beneficial to have further discussions with the GP. Mrs X explained she had spoken to her daughter's GP but Y was refusing to see the doctor or engage with anyone. She said that was why they were asking for more help.
 26. The Council wrote to Mr and Mrs X in early March 2017 to inform them of the decision to start the fast track proceedings. It explained that prosecution could be withdrawn if Y's attendance had improved sufficiently by the date of the court hearing. The letter invited them to contact the Pupil Entitlement service immediately if there were any factors relating to Y's absences that the service might not be fully aware of.
 27. Mrs X replied expressing how upset she and Mr X were to receive the letter. She asked the Council to reconsider the decision to prosecute. She said she and her husband were doing everything possible to try to get their daughter to go to school, and were not condoning non-attendance. They had taken Y to the GP and had a further appointment booked. The doctor had found she had a vitamin deficiency which they felt could account for the symptoms of anxiety and depression they said she displayed.
 28. Following a further referral by the School to the Family Support Network, the Council allocated a support worker to meet the family before discussing the case at the next Forum meeting in April 2017. The support worker carried out the visit in mid-March. She then sent an email to the Pupil Entitlement service explaining that Y's GP had referred her to the Child and Adolescent Mental Health Service

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- (CAMHS) because of her low mood and anxiety. She asked the Council to suspend the prosecution until Y had been offered further support.
29. The Council refused the request saying it had already made the decision to pursue a fast track prosecution. It confirmed that if either Y's attendance improved or there was evidence Y was medically unfit to attend school, it would withdraw the action.
 30. In mid-March 2017 there was a meeting at the School with Mr and Mrs X, Officer B, and Y's Head of Year. The meeting discussed strategies for Y to return to school gradually, starting with a significantly reduced timetable. The Council explained the fast track prosecution process and that this was an opportunity for Y to see her GP and obtain medical evidence to show she was prevented from attending school because of her levels of anxiety.
 31. Mrs X then sent the Council a letter from Y's GP. It confirmed Y had been "struggling with anxiety relating to attending school". It said Mrs X had attended the surgery several times to discuss her daughter's health but Y had not attended any appointments herself. The GP explained some concerns she had about Y's physical health. She said Y had declined help from the YES service and had recently been referred to CAMHS.
 32. Officer B acknowledged the efforts the parents were making to get help and support for their daughter. However she said the evidence was not sufficient to use as a defence for complete lack of attendance, particularly as the GP had not seen Y yet. She said Mr and Mrs X needed to try to reintegrate Y gradually back into school. Mrs X explained the difficulties she had getting her daughter to engage with CAMHS, the YES worker and anyone else offering support.
 33. Mrs X asked the School what was happening with the Early Help Plan. The School explained that when it first tried to refer the case to the Forum in October 2016 it was told it did not meet the threshold for referral. However it was now going to the Forum as it met the threshold because of the lack of progress. It said it would let her know the outcome. The School did not agree to Mrs X's request to send work home for Y as it said this would support her non-attendance. But it said it would like to plan Y's reintegration into school. Mrs X said she understood the reasons for not wanting to send work home.
 34. The Forum meeting took place at the end of April. Officer B could not attend but the meeting considered a report from her as well as information from the School, CAMHS and Early Help staff. The Forum decided that the family qualified for level three targeted early help. It agreed the following actions.
 - To arrange a Team Around the Family meeting to produce a support plan
 - To allocate a Youth Worker for Y
 - To encourage Y to engage with the YES service, but if she continued to refuse, to offer a reassessment by CAMHS
 - To plan Y's gradual reintegration back into school
 - For the School to start sending work home for Y so she would "feel less 'out of the loop' and ensure her anxieties around school refusing are minimised where possible".
 35. The Council explained that the support agreed by the Forum would not affect the decision to go ahead with the prosecution, but Mr and Mrs X would be able to explain to the magistrate any further work being carried out with Y.
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36. After the Forum meeting Officer B contacted the School to say she did not support the idea of sending work home unless the parents had provided medical evidence to confirm there was a medical reason for non-attendance. She said otherwise it could be misinterpreted as condoning the absence and reinforcing the current situation.
 37. In mid-May the Youth Worker allocated to Y visited the family at home. Y would not meet her face to face but they spoke through her bedroom door. The Youth Worker wrote to Officer B to say she was very concerned about Y as she still could not leave the house and was not receiving any services. She confirmed she was making another referral to CAMHS. She said from what the parents said and from her own observations, Y had “very high anxiety as well as additional health issues that may affect her mood and ability to function”. She was aware there was no formal diagnosis and said she was supporting the family to get one. The Youth Worker said she did not think Y was capable of attending school at the moment and she would like to see a ‘blended learning package’. She asked for advice about this. She felt it would be beneficial to Y and her parents not to have the pressure of a court case as it was affecting the health of the whole family.
 38. Officer B replied that without a formal diagnosis and medical evidence, a blended learning package “was not an option”.
 39. Mrs X contacted Officer B to ask what sort of medical evidence would be satisfactory. In the course of the correspondence Officer B explained the absence remained unauthorised without medical evidence but if it could be provided she would review the matter. Mrs X said she had now realised her daughter’s anxieties were more serious than she had first thought. She explained the support the Youth Worker would be providing and asked for the School to be allowed to send work home for Y. She said she understood and accepted the Council needed medical evidence and hoped the CAMHS referral would provide this. She acknowledged Officer B had always made it clear that medical evidence was needed.
 40. The magistrates court hearing was set for mid-June 2017. The Council’s statement to court set out the history of the case and the support offered to try and get Y back to school on a gradual basis. It explained the Council had considered an Education Supervision Order but felt the fast track prosecution route was more likely to bring about change as it gives an incentive to improve attendance.
 41. About three weeks before the hearing Mrs X told the Council she had managed to get Y to see the GP who confirmed “there is a high level of anxiety in respect of social and school phobia”. The doctor would be supporting the referral to CAMHS. However she said it would take some time for the GP to produce a letter for the Council.
 42. The court adjourned the hearing for six weeks to allow Mr and Mrs X more time to obtain medical reports. In June 2017 Mr and Mrs X provided a letter from Y’s GP and a psychologist’s report following an assessment. At first the Council decided the evidence was not sufficient to show Y was medically unfit to attend school. It also did not uphold a complaint from Mrs X about the way the Council had handled her daughter’s case.
 43. Then after considering Mr and Mrs X’s solicitor’s submission to the court and after taking legal advice, the Council decided to withdraw the prosecution.

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44. While she was waiting for the psychologist's report Mrs X asked the School to send work home for Y. The School did not agree to do so, saying it had not yet had clear medical evidence that Y was medically unfit to attend school. Also it felt it might make her anxiety worse as she had missed so much work.
 45. When the Council withdrew the prosecution it also made a referral to consider a programme of 'blended learning' on medical grounds. It agreed to provide alternative education of 25 hours a week through its home schooling unit, made up partly of home tuition and partly online provision. Y is dual registered with the School.

Conclusions

46. At first Y and her family were not providing any reason why she was not able to attend school, other than that she did not like it. They were not saying she was medically unfit or her absence was due to anxiety. As she was still on the school roll and there was no medical evidence or other reasons provided, the responsibility lay with the parents to ensure the child attended and with the School, rather than the Council, to provide the education.
47. When the School made the referral to the Pupil Entitlement service because of consistently low levels of attendance, we do not find fault in the way the Council considered the matter. It based its decision to issue a warning letter for non-attendance on the information provided in the referral. It was aware of the action the School had taken to offer support to Y and her parents and that this had not resulted in any significant improvement. The School made it clear it would not be able to authorise absence without medical evidence that Y was not fit to attend school. The Council followed the proper process in deciding the case was suitable for fast track prosecution and so giving the family 12 weeks to improve attendance or provide medical evidence that Y was unable to attend school.
48. It is understandable that the Council's decision caused distress to the family, especially as Mr and Mrs X felt they were doing everything they could to try and get their daughter to school. However it is not for us to interfere in the decision unless there was fault in the way it was reached. We do not consider that is the case here. There is also evidence that Mr and Mrs X supported the referral to the Pupil Entitlement service initially as a way to get Y to take the matter seriously. The involvement of the Pupil Entitlement service did not prevent the School or the Council offering support, but ran alongside these offers.
49. However we find that the Council's approach was flawed from when the Forum considered the case at the end of April 2017. The Council reviewed the medical evidence provided at each stage, which ultimately led to a decision to withdraw the prosecution and offer a tailored package of education. But until then we consider that the Pupil Entitlement service did not give sufficient consideration to the views of other professionals in deciding how to provide an education to Y. The Forum agreed a support plan, including sending work home as part of a way of encouraging Y back to school. In our view it was not appropriate to intervene to try to override this decision by advising the School not to do so.
50. In response to the draft report the Council said it did not apply pressure to the School in relation to sending work home. It said the School is very experienced in dealing with attendance matters and without medical evidence its approach was appropriate. It says the person at the Forum who suggested sending work home was not an education professional and was not aware of all the facts or the legislative framework. So it says the recommendation was misplaced. However we have found evidence that the Council did tell the School not to send work

home. If the Council considered it was the School's responsibility to provide education, rather than the Council's to provide alternative education, then it should not have advised the School not to comply with the agreed plan. The School continued to refuse Mrs X's requests to send work home during the rest of the term. It seems likely this stance was influenced by the Council's. So Y missed out on the chance to have work sent home for a term.

51. We also consider the Council was at fault in refusing to entertain the possibility of an alternative education package earlier by saying it was 'not an option'. The Council says its duty is to provide education where there are 'health issues' and this must be supported by medical evidence. The Council's view is that until the medical evidence was provided there were no grounds to consider alternative education or withdraw the prosecution. We disagree with this restrictive approach. We agree that where a child cannot attend school for medical reasons the Council is entitled to expect medical evidence to be provided. However the Council needs to consider the individual circumstances of a case, and not adopt inflexible policies. The duty to provide alternative education may arise for reasons other than illness. If a child is not receiving education because of illness, exclusion or for other reasons, the Council should consider whether it has a duty to arrange suitable education other than at school.
52. Y had not received any education since February 2017. Although she had not had a formal medical diagnosis, support workers and the family had advised the Council she was suffering high levels of anxiety, and she was being referred to CAMHS. Even without a clear medical diagnosis, there was evidence of a reason for non-attendance. If the Council had taken a more flexible approach and considered the possibility of alternative education sooner, it might have resulted in the 'blended learning package' being available to Y earlier.
53. We find that in this case the Council was focusing on the prosecution to the detriment of the child's education. It lost sight of the primary interest of the child to receive a suitable education. The Council denies that it focussed unduly on the prosecution. It says it gave the family every opportunity to provide evidence earlier and it would have withdrawn the legal action earlier if it had received it. However in response to our draft report the Council commented that if it had endorsed sending work home this would have been seen as contributing to the offence and potentially undermining the strength of the legal action. This is in our view supports our conclusion.
54. We accept, though, that the Council was not solely responsible for the delay in Y receiving suitable education. If Mr and Mrs X had sought to obtain medical evidence earlier, as the School and the Council had advised several times, the issue might have been resolved and the final outcome achieved sooner.
55. Nevertheless the Council's approach contributed to a loss of opportunity for Y to receive some education at home following the Family Support Network Forum meeting.

Recommendations

56. We recommend that to remedy the injustice to the family the Council should take the following action.
 - Apologise to Mr and Mrs X for not fully considering alternative approaches to ensuring an education for their daughter from April to July 2017.

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- Pay them £400 to recognise the loss of educational opportunity during this period, to be used for the benefit of Y's education.
 - Remind relevant staff that the duty to provide alternative education under section 19 of the Education Act 1996 may arise for reasons other than exclusion and illness.
57. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

58. We have completed our investigation into this complaint. We have found fault causing injustice. The Council should take the action we have recommended in paragraphs 56 and 57 to remedy that injustice.