

Digest of Cases 2007/08

Section C

Education

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Introduction

In each of the last five years we have received about 1,500 complaints about education-related matters. Complaints about school admissions account for most complaints in this subject, and in 2007/08 there were 942 such complaints (a 14 per cent increase from the previous year). In the same period we received 191 complaints about special educational needs (which was a reduction of almost 20 per cent on the previous year). We also received 96 complaints about school transport.



School admissions

Introduction

Revised and updated statutory codes of practice on school admissions and on admission appeals have been recently issued by the Department for Children, Schools and Families. Much publicity has been given to the importance of admission authorities following the legislation, guidance and published policies and procedures in this area. However, we still receive complaints about very poor practice by some admission authorities, either in the procedures that are followed in allocating places at particular schools, or in the process that is set up to hear appeals where a child has not been allocated a place at the parent's preferred school.

Some of the common errors we see in the allocation process include:

- failing to have a clear and objective oversubscription policy. The School Admissions Code makes it clear that the criteria used to allocate places when a school is oversubscribed are fair. The Code provides guidelines on achieving good practice in setting oversubscription criteria for admission authorities to help them ensure that their admission arrangements are fair to all children and their families;
- unclear information to parents about admissions criteria; and
- failure to demonstrate how admission criteria are applied.

Some of the common faults we see at the appeal panel stage include:

- panels accepting an admission authority's case without question;
- failure to consider views of parents;
- conflict of interest by clerks, and sometimes panel members;
- inadequate decision letters; and
- lack of clarity about the issue of prejudice. The School Admission Appeals Code makes it clear that appeal panels have to consider whether or not there would be prejudice caused by the additional admission of the child. Where this is the case, the admission authority must be able to demonstrate this over and above the fact that the published admission number has already been reached. We receive complaints from parents who say that the independent appeal panel failed to question the admissions authority about this point and did not address the question of what prejudice would arise if their child were admitted.

C1: School admissions

Selective grammar school – shortcomings in appeal process

The complaint

Mrs G applied for a place for her daughter at a girls' grammar school. The school was a foundation school where the governors were the admissions authority. It was a selective school and places were allocated to the girls who scored highest in the school's entrance examination.

When Mrs G was advised that her daughter had not reached the required level, and so was not allocated a place, she lodged an appeal. Because Mrs G felt there were faults in the way her appeal was considered, she complained to the Ombudsman.

The Ombudsman's investigation

The Ombudsman's investigation uncovered wide-ranging and serious shortcomings in the appeal process. These included:

- no written case was presented by the admissions authority to the appellants and the members of the appeal panel to demonstrate what prejudice to efficient education or efficient use of resources would be caused by the additional admission;
- the head and the chair of the admissions committee had been alone with the members of the appeal panel, contrary to the Government's *School Admission Appeals Code of Practice*;
- places that had become available after the initial allocation of places were considered at appeal, rather than being allocated from the waiting list;
- inadequate records were kept of the reasons for the appeal panel's decisions;
- the clerk to the appeal panel was inappropriately involved in preparing evidence for the panel; and
- information provided for parents was misleading.

The Ombudsman's view

The Ombudsman concluded that the faults in the process were so severe that he considered they called into question the decisions the appeal panel had reached on Mrs G's appeal. He also said that Mrs G could not be certain that, if proper procedures had been followed, her daughter would have been awarded a place. The Ombudsman also noted that Mrs G's sense of unfairness was compounded because there had been an error in the appeal panel's decision letter giving the wrong examination result for her daughter. The Ombudsman said:

“There were a number of fundamental flaws in how the appeal process was conducted for appeals for admission... They indicate a lack of understanding of the basic tenets of the appeal process by the admissions authority, the clerk and the appeal panel.”

The outcome

The Ombudsman said that on balance he considered that Mrs G’s daughter would have obtained a place at the school had the many failings he had identified not deprived her of a fair hearing. For this reason he called upon the governors to offer her a place. The governors agreed, and Mrs G accepted this offer.

In welcoming the governors’ actions during the investigation to accept many of his findings, the Ombudsman recommended that the other areas of fault he had identified should also be reviewed.

(Report 07B02334)

C2: School admissions

Selective grammar school – appeal panel provided by county council – inappropriate questioning of applicants

The complaint

The parents of 10 children applied for places at a grammar school, a foundation school which was wholly selective by academic ability. The governors (as admissions authority) refused the children places as they had all been unsuccessful in the selection tests. The school was not full, and the parents took up their right to appeal against the refusal of places.

The governors engaged the county council to provide the admissions appeal panel and its clerk to consider the appeals. The parents complained about the way their applications for the admission of their children had been considered, and were particularly concerned about the manner in which the panel heard their appeals.

The Ombudsman’s investigation

The Ombudsman found faults in the way the appeals had been handled, including:

- information on the test scores was provided too late and in a way that was not fair to the parents;
- the relevant information was not delivered in a clear and sensitive manner by the panel chairman to the parents;

- the panel took account of irrelevant factors such as waiting lists and the absence of a head teacher's 'appeal';
- the panel put pressure on participants to keep some hearings unnecessarily short; and
- some of the panel's approach to and questioning of parents was wholly inappropriate.

The Ombudsman's view

The Ombudsman concluded that this maladministration had deprived the complainants of the opportunity to have their appeals considered in a fair and sensitive manner. He said:

“Appellants are entitled, whatever their circumstances and outlook, to have their appeals considered in accordance with the applicable law and codes of practice, but this did not happen. The denial of this opportunity amounted, of itself, to a serious injustice, which was largely remedied by the rehearings which the governors promptly arranged.”

The Ombudsman said that governors of voluntary aided and foundation schools who engage a local education authority or another outside agency to provide an appeal panel, a clerking service, or both, should satisfy themselves that the service to be provided will meet their expectations, and also accord with the law and the applicable codes of practice. He pointed out that governors cannot take it for granted, without proper enquiry, that the appeals service that they commission will be fit for purpose.

The outcome

Early in the Ombudsman's investigation the governors offered to arrange new appeals for the complainants with a panel of different members and a different clerk. The Ombudsman welcomed this. All the parents accepted the offer, and all the subsequent appeals were upheld.

The Ombudsman also asked the governors to review, in consultation with the council, their arrangements for the hearing, consideration and clerking of admission appeals, and to provide training that would eliminate the faults identified.

(Report 06A03575 and others)

C3: School admissions

Admission procedures “fundamentally flawed” – application form inadequate – appeal panel’s failure to scrutinise admission policy

The complaint

Three sets of parents complained about the procedures followed by a boys’ school in considering applications by their sons to join Year 7 of the school. They also complained about the conduct of the appeals held to consider the refusal of offers of places to their sons.

What happened

Parents did not receive copies of all documents relevant to their appeals, as required by the *School Admission Appeals Code of Practice*. The Ombudsman found that the appeal panel had failed to scrutinise the operation of the school’s admission policy properly.

The Ombudsman’s view

The Ombudsman said the school’s use of an application form as part of its admission process had to meet the tests set out by government guidance – in particular, that it was designed and marked in such a way that was lawful, fair and objective. He did not consider that the particular form used by the school for admissions was capable of meeting those tests.


The Ombudsman said the fundamental requirement that school admission policies must be ‘objective’ had been overlooked by the appeal panel.

The outcome

The Ombudsman recommended that each of the complainants’ sons should be offered a place at the school.

The Ombudsman noted the school’s intention to revise its admission criteria for Year 7, and recommended that those should be subject to consultation with central Government and that the school sought legal advice prior to publication.

(Report 06B01255 and others)



C4: School admissions

Failure to provide information to parents before appeals – records of appeal hearings destroyed too quickly

The complaint

Three sets of parents applied unsuccessfully for places for their sons in a school's reception year. They complained about the handling of the appeals against the refusal of their applications. The school is voluntary-aided and the governing body is the admission authority.

What happened

The school failed to provide written information in advance of the appeal hearings explaining properly why the applications had been unsuccessful. Investigation of the complaints was difficult because the records relating to the appeal had been destroyed immediately after the appeal hearings.

The Ombudsman's view


The Ombudsman found that the appeals had not been conducted in accordance with the *School Admission Appeals Code of Practice*. He said that, as parents did not know in advance of the hearing why their applications had been unsuccessful, they were at a considerable disadvantage when making their appeals.

The outcome

The Ombudsman recommended that the governors should:

- offer each complainant a new appeal as soon as possible with a fresh appeal panel and a different clerk and agree to abide by the outcome;
- arrange relevant training for governors dealing with admissions, panel members and the panel clerk; and
- keep records relating to appeals for two years.

(Report 07B04448 and others)



C5: School admissions

Failure to give reasons for refusal of place – criteria not “objective, clear and fair”

The complaint

Mr H was refused a place for his daughter at a school. He complained that the school’s admission criteria did not comply with the *School Admissions Code of Practice*; and that there were serious flaws in the way the appeal panel heard his appeal against the refusal of a place.

What happened

Mr H applied under ‘Category 3’ of the school’s admission procedure. In this category, 21 children were allocated places out of 54 applicants, but his daughter was not one of them. The school could not describe fully how it selected the 21 successful children.

Neither the school, nor the local education authority (LEA) on the school’s behalf, provided Mr H with specific reasons why his daughter was refused a place. He was therefore unable to prepare for his appeal properly because he did not know until the hearing itself that other children in ‘Category 3’ had been given priority over his daughter.

The Ombudsman’s view

The Ombudsman found that the school’s admission and appeal arrangements were flawed, and in particular that the admission criteria for ‘Category 3’ applicants were not “objective, clear and fair” as required by the Code. The criteria did not reflect accurately how the decisions were made in practice.

The Ombudsman also found faults in the way the appeal had been heard. She said that the appeal panel:

- was not told how the admission criteria were applied to Mr H’s application;
- was given inadequate information about the issue of class size prejudice; and
- failed to consider two key issues properly – whether the admission criteria had been applied correctly, and whether the decision to refuse the child on grounds of class size prejudice was a decision that a reasonable authority would make in the circumstances of the case.


The Ombudsman concluded that had the appeal panel considered this appeal properly, it would have had no alternative but to decide the school had not made a clear case for the decisions it had made about which children in ‘Category 3’ should be admitted.

Outcome

The Ombudsman recommended that the school should:

- urgently review its admission criteria and the way they are applied in practice to ensure that they are clear, fair and objective;
- work with the LEA to agree how it will ensure that, from 2008, applicants are given sufficient detail about the reasons for refusal;
- provide sufficient information necessary to allow the appeal panel to undertake its duties properly;
- ensure appeal panel members are adequately trained to carry out their duties properly and to understand what information they need; and
- offer a place to the child, except if Mr H decides it would not be in his daughter's best interest to accept a place now, the school should instead pay him £250 for his time and trouble in making his complaint.

(Report 07C03519)



C6: School admissions

Appeal panel not properly constituted

What happened

Mrs J applied for her place at a foundation school for her daughter. The application was refused and so Mrs J attended an appeal hearing. The governors of foundation schools are responsible for all admission matters and for arranging appeals against their decisions. Mrs J complained that there were faults in the way the governors considered her application; she also complained that there were faults in the way the subsequent appeal was handled.

The Ombudsman's investigation found that the panel hearing Mrs J's appeal did not contain sufficient people and that, at times, the clerk to the panel was not present. Such measures were contrary to the requirements of the *Code of practice on school admission appeals*.

The governors settled the complaint to the Ombudsman's satisfaction by arranging a rehearing of the appeal by a new panel consisting of completely different members, and with a different clerk.

(Case reference confidential)



Special educational needs

Introduction

Each year the Ombudsmen receive a number of complaints about special educational needs (SEN), but they are unable to investigate all of them.

Local authorities have certain duties in connection with the assessment of children's special educational needs, and where appropriate, for ensuring that the necessary provision is made for them. The Ombudsmen can investigate complaints about a council failing to deal properly with a child's special educational needs because of a fault in the process.

The law does not allow the Ombudsman to become involved in any internal school matter, so we cannot investigate complaints about any issues that are the responsibility of the staff or governors of schools and colleges.

Some of the faults we see in considering these complaints include:

- delays by local authorities in dealing with SEN issues;
- failure by local authorities to make the provision specified in SEN statements; and
- failure by local authorities to monitor and take action in cases where children are out of school.

C7: Special educational needs

School named in statement – readmission following failed move abroad – faults by both school and council

The complaint

Ms K had a son, L, who had a statement of special educational needs (SEN) naming the school he should attend. Ms K complained that the school was fault as it refused to readmit L following a failed move abroad.

Ms K also complained that the county council then failed to ensure that the school met its obligation to readmit L. And she complained that the council failed to ensure that appropriate alternative educational provision was made for L for the 14 months that he was out of school.

The Ombudsman's investigation

The Ombudsman's investigation found that the school was at fault in:

- refusing entry to a child with an SEN statement naming the school;
- refusing entry when the school was not full in the relevant year group; and
- failing to provide Ms K with her right of appeal against this decision.

The Ombudsman found that the county council was at fault in:

- not pursuing the issue of L's readmission to the school in a sufficiently proactive fashion;
- failing to make any interim educational provision for him during the 14 months he was out of school;
- then putting in place provision that was insufficient and did not meet the requirements of his SEN statement;
- failing to consider at an early stage what alternative provision should be made for L, and in then failing to pursue this issue in a sufficiently proactive way; and
- failing to respond properly to Ms K's complaints.

The Ombudsman said:

"This is an extremely serious case of two authorities, through their actions and inactions, washing their hands of responsibility for a child's education. Both failed [L] at an important time in his development, with potentially serious consequences for his future. Neither the school nor the council took [L's] rights and needs to heart."

The outcome

The Ombudsman recommended that the council should:

- pay Ms K £5,000 on L's behalf;
- pay her a further £500 in recognition of her distress, time and trouble.

The Ombudsman welcomed the fact the council had altered its procedures as a result of this case. He also recommended that the school should review its procedures.

(Report 06A11234 and 14354)

C8: Special educational needs

Delay in issuing statement – limited home tuition – delay in finding a new school

The complaint

Ms M complained about the way the council dealt with the special educational needs of her son, N, who had left his mainstream secondary school at age 13 in July 2004. Between September 2004 and early 2007, N only received limited home tuition.

What happened

While the council assessed N's special educational needs after July 2004 it did not issue a final statement until May 2007. During that time the council attempted to find an alternative school place for him and approached a wide range of schools. In April 2007 a new school was identified, and N began attending on a part-time basis.

The Ombudsman's view

The Ombudsman found fault by the council in that:


- the education welfare service failed to investigate and monitor N's case properly, and it was closed inappropriately;
- the council failed to arrange promptly for home tuition for N and subsequently failed to increase the level of tuition despite an agreement to do so; and
- the council delayed before issuing a final statement of N's special educational needs.

The Ombudsman found that, between September 2004 and March 2007 the limited education that was provided did not meet N's needs. He said "The council cannot be held responsible for the entire period. But I am satisfied that, were it not for the faults I have identified, home tuition would have been provided at an appropriate level early in 2005."

The outcome

To remedy the injustice, the Ombudsman recommended that the council should pay Ms M £7,000 to be used for a purpose related to N's education or training, plus £250 to recognise her time and trouble in pursuing her complaint.

(Report 05A15425)



C9: Special educational needs

Boy with special needs only allowed to attend school one day a week – parent unable to appeal as child not formally excluded – council failed to take action

The complaint

Ms P complained that the council failed to provide appropriate educational provision for her son, Q, who had a statement of special educational needs.

What happened

After doing well at a special primary school, Q moved to his local mainstream secondary school where his behaviour caused problems. In years 8 and 9 he was excluded for fixed periods, and from then on the school severely restricted his attendance. A modern apprenticeship course and a work placement both broke down.

Ms P could not appeal against her son's exclusion, because the school had not formally excluded him.

The Ombudsman's investigation showed that the council did nothing about the situation although it knew that Q was only allowed to attend school part time and that the school felt it could not meet his needs. Although an educational psychologist and a consultant psychiatrist recommended that Q should be reassessed, the council refused on grounds that he was then entering year 11. At this point Ms P asked the council to place her son at a specialist independent school. Initially the council ignored her requests, and then it refused on grounds that the mainstream school could meet his needs.

The Ombudsman's views

The actions of the school were outside the Ombudsman's jurisdiction. She noted, however, that by not making the exclusions either formal or permanent the school effectively circumvented:

- Ms P's rights of appeal;
- the governors' obligation to meet with her; and
- the council's statutory obligation to provide full-time education for her son.

The Ombudsman found maladministration by the council for failing to:

- refer Q for support in accordance with Government guidance;
- act in accordance with its own behaviour support plan;
- listen to Ms P's concerns about her son's restricted attendance and to consider the implications of this for its own duties;
- actively consider his annual review reports as required by the *Special Educational Needs Code of Practice 2001*; and
- respond to requests to reassess Q's needs as required by the Code.

The Ombudsman was also concerned that there was no evidence that the council had considered its general duties under the Disability Discrimination Act 2005.


As a result, Q's educational needs were not met throughout his last three years at secondary school. He was assessed as being 'able' and 'intellectually bright' but was deprived of the opportunity to reach his full potential, to be included in his school community, and to make a successful transition to adulthood. His mother suffered frustration and distress in trying to support him while he was out of school for long periods and in trying to get the council to fulfil its duties.

The outcome

The Ombudsman recommended that, to remedy the injustice, the council should:

- create a special fund equivalent to three years' basic wages for a 16/17-year-old, plus three years' college fees and make it available to Q to meet his living costs and fees if he returns to education in the next 10 years; and
- pay Ms P £1,000 to reflect the impact of its failings on her.

(Report 06C06190)



C10: Special educational needs

Failure to provide speech and language therapy

While the Ombudsmen cannot investigate complaints about internal school matters they can consider complaints where a local authority has failed to make the provision specified in a child's statement of special educational needs. The following example illustrates such a case and shows that making such provision can be an effective way to resolve a complaint.

What happened

Mrs R's son had a statement of special educational needs that said he should receive weekly speech and language therapy sessions. Mrs R complained that the council had not always made this provision.

During the course of the Ombudsman's consideration of the complaint the council accepted that there had been a shortfall in provision and Mrs R's son had missed out on eight sessions. By way of remedy the council arranged for him to receive five speech and language therapy sessions during the forthcoming summer holiday period and a further three sessions early in the next term.

(Case reference confidential)



C11: Special educational needs

Unofficial exclusion – boy with autism

What happened

S had an autistic spectrum disorder and his statement of special educational needs said that he should receive one-to-one classroom support. For various reasons his school placement broke down and the school asked S's parents to keep him at home. The council said that there was a place available at the school, but his parents took the view that it was not feasible for S to return. The council offered an alternative school but this was not acceptable to the parents. As a result, S did not receive any educational provision for the next six months.

The Ombudsman found that the council had been aware that S was at home, not receiving any education and that the school kept him on the roll showing him as being on authorised absences. During this time there was no intervention by the council's educational welfare service or behaviour support teams.

By way of remedy, the council agreed to pay £1,000 compensation to S's parents. It also reviewed the way 'unofficial' exclusions from school were handled.

(Case reference confidential)



School transport

Introduction

Complaints about school transport are often linked to complaints about school admissions. This is because securing a place at a school some distance from the family home may have implications for transport arrangements to that school.

Many school transport complaints are not pursued because there is no evidence of administrative fault by the authority. What is often revealed is that authorities have dealt with requests for assistance with transport in line with their established policies and practices. Sometimes, however, in securing a place for their child at a school some distance from the family home, parents have failed to appreciate that this will have an impact on transport.

But there are examples where councils appear unable to relax their policies and procedures to take account of a complainant's particular circumstances.

C12: School transport

Child developed mobility problems – assistance with transport to school refused – Disability Discrimination Act

The complaint

When Mrs T chose to send her daughter V to a school over three miles from her home, she realised that the council would not provide any assistance with transport and that the family would have to make its own arrangements. These initially worked well with V catching a bus or getting a lift with a friend. However when V was in the first term of her GCSE year she developed mobility problems and travel to school became very difficult.

V's school and Mrs T contacted the council at various times to request assistance with transport but this was refused. An appeal to the student support appeals panel was unsuccessful; a second appeal to that panel allowed the appeal and the council provided transport for V for the next two terms.

As Mrs T was unable to progress her complaint further through the council's complaints procedure she complained to the Ombudsman.

The Ombudsman's investigation

It became clear during the investigation that the council had initially failed to consider its duties under the Disability Discrimination Act 1995. Nor had the council fully taken account of its education transport policy, which said that assistance could be given in special circumstances.

The council and the appeal panel initially appeared not to appreciate that, while V had not been attending her nearest suitable school, her illness and examination course meant that she was now unable to attend any other school.

The Ombudsman's view


The Ombudsman found that the council's procedures for dealing with requests for help with transport were inadequate and that it failed both to apply its own education transport policy properly and to consider its duties to the child under the Disability Discrimination Act. The council also took too long to deal with Mrs T's complaint about the issue.

The outcome

The Ombudsman asked the council to:

- apologise to V in writing;
- reimburse V's and Mrs T's travel costs for the first term;
- pay Mrs T £500;
- pay V £150;
- develop a proper procedure for dealing with requests for help with school transport in circumstances other than children simply starting at a new school;
- ensure that all officers are aware that its own education transport policy gives it discretion to award help in exceptional circumstances and of its duties under the Disability Discrimination Act; and
- review its complaints procedures.

(Report 06C02934)



Student support

Introduction

As grants to students have, in the main, been replaced by student loans, the Ombudsmen receive relatively few complaints about student support. The Ombudsmen can consider complaints about the actions of local authorities in a student's financial assessment process, but they cannot consider the actions of the Student Loans Company.

C13: Student support

Mature student – incorrect assessment

The complaint

Ms W was a mature student with a partner and two children. When she complained to the Ombudsman she was about to start the fourth and final year of a degree course. In previous years she had been eligible for a parent learning allowance, and 85 per cent of her childcare costs. Her circumstances had changed and this altered the basis of the student assessment for her final year's study.

Ms W believed that the council had incorrectly assessed her student grant entitlement and as a result she could not afford to continue her course. She tried to raise this matter with the council but was advised that there was no appeal or complaints procedure for the assessment.

The Ombudsman's investigation

Our investigation showed that there had been some confusion over which figures the council had used to calculate Ms W's entitlement. The Ombudsman said that it should have been apparent to the council much earlier in the process that there *may* have been a problem with the information it had used to calculate Ms W's entitlement. The council accepted that it should have steered her towards its corporate complaints procedure to address this, and that its failure to do so was maladministration. This error meant Ms W had to take unnecessary time and trouble in having to pursue her complaint with the Ombudsman.

The outcome

The council agreed to remedy the complaint by paying Ms W £50, which the Ombudsman considered was a reasonable settlement.

(Case reference confidential)