Local Government
OMBUDSMAN

Digest of Cases 2008/09

Section D

Education

LGO 03 (03/08)

Introduction

We have seen a significant increase in complaints about education admissions over the past two years. In most of the admissions cases summarised here there were failures to have regard to and to apply the admissions code and the admissions appeal code, in some cases making fundamental errors. In one case (D6) the council failed to fulfil its duties under the Disability Discrimination Act when considering an application from a child with autism.

The main feature of the complaints about special educational needs is poor communication, either between education and social care departments or between councils. This poor communication resulted in delays in making assessments or in ensuring proper provision for children with special needs.

D1: School admissions

Failure to comply with statutory School Admissions Code – places wrongly granted to children with sporting or musical aptitude using criterion intended for medical or social need

The complaint

Three families complained about the handling of their appeals against the refusal of places for their children at a school. It was a voluntary aided faith school, and so was responsible for its own admission arrangements and appeals.

The Ombudsman's investigation

Criterion 3 of the school's admissions criteria allowed for the admission of children who had an exceptional need relevant to the school. The school used this to make offers of places to eight children on the grounds of aptitude for sport or music. But the statutory School Admissions Code explicitly prevents this and makes it absolutely clear that social or medical need criterion should not be used to admit children on the grounds of aptitude.

The Ombudsman's view

The Ombudsman said he could see absolutely no justification for the school's belief that it was able to offer places in this way, and pointed out that:

"The [statutory Admissions] Code is absolutely clear that social or medical need criterion should not be used to admit children on grounds of aptitude. The school unlawfully failed to comply with this requirement." He added, "I find this surprising given that similar concerns were raised in my two previous reports about the school."

He concluded that the three familes who complained to him would not have been offered places at the school even if this fault had not occurred. But he accepted that they were likely to feel a sense of outrage at the school's failure and that they had taken unnecessary time in trouble in pursuing their complaints.

Outcome

The Ombudsman recommended the school to pay £100 to each of the three families.

The school had already changed its admission arrangements for the next year. However, the Ombudsman also recommended that it ensure training was provided for members of the admissions committee before the new admissions round got under way, and that it was made clear to parents that aptitude and ability cannot be considered under the exceptional need criterion.

(Report 08 003 807)

D2: School admissions

Very serious faults – numerous breaches of statutory School Admissions Code and School Admission Appeals Code

The complaints

Five families complained they had been wrongly refused places for their children at a school, and about the handling of their appeals against the refusals. It was a voluntary aided faith school, and was responsible for its own admission arrangements and appeals.

The Ombudsman's investigation

The Ombudsman identified very serious faults in how the admission procedures were conducted. The school breached the mandatory provisions of the School Admissions Code by:

- using admissions criteria that were not those published by the local authority for the school;
- failing to prioritise children in care in its oversubscription criteria;
- failing to draw up admission arrangements that were clear, fair and objective;
- using a points and quota-based system without any indication being given to parents that this was the case;
- failing to provide a proper explanation of how the oversubscription criteria would work (indeed the admissions panel sought deliberately to prevent parents knowing how their application would be considered);

- asking for a photograph of the child;
- asking the child to provide a personal statement;
- failing to train members of the appeal panel in accordance with the provisions of the code; and
- allowing the deputy director of the body that set the religious criteria to chair the appeal panel.

The appeal panel breached the mandatory provisions of the School Admission Appeals Code by:

- failing to follow the two-stage appeal process, and in particular, failing to ensure the admissions criteria had been properly applied; and
- failing to notify parents of the decision on their appeals.

As a result of these significant failings, the Ombudsman could not conclude that the children of the five complainants should not have obtained places at the school.

The Ombudsman's view

The Ombudsman said:

"Despite the introduction by Parliament of two statutory codes with mandatory provisions, and an earlier Ombudsman report critical of how the school had administered its admission arrangements and admission appeals, limited regard appears to have been given by the governors to their statutory duties."

Outcome

At an early stage of the investigation, the Ombudsman proposed that the school offer places to each child. The governors refused to act on this at the time, but the Ombudsman repeated his recommendation for the three complainants who still wished their child to attend the school.

The school needed to undertake a fundamental review of its admission arrangements because, although it had started this process, significant concerns remained, and the Ombudsman continued to raise these with the governors.

(Report 08 005 300 and four others)

D3: School admissions

Foundation school – serious deficiencies in handling of appeals – no explanation to panel or parents on how places had been allocated

The complaint

Mrs P complained about the handling of her appeal against the refusal of a place for her son at a school. It was a foundation school, and so was responsible for its own admission arrangements and appeals.

Mrs P considered she had been misled by comments made by the headteacher at a school open day about the likelihood of gaining a place for her son. The Ombudsman commented:

"If similar comments were made to parents, no matter how prefaced, I could see that this could give parents the impression that they were very likely to get a place."

The Ombudsman's investigation

The Ombudsman's investigation uncovered serious deficiencies in how appeals were conducted, most significantly:

- there was inadequate training for panel members;
- no explanation was given to the appeal panel and appellants about how places had been allocated and why prejudice would be caused if a further child were admitted; and
- appeals were heard by different appeal panels and decisions were made before all the appeals had been considered.

Outcome

The Ombudsman found maladministration causing injustice and recommended the governors to:

- review the arrangements for the appointment and training of members of admission appeal panels, for multiple appeal hearings and the presentation of information to appeal hearings; and
- offer Mrs P a fresh appeal hearing, and abide by the decision.

(Report 07B04356)

D4: School admissions

Failure to apply co-ordinated admissions process – use of additional application form – failure to properly consider appeals

The complaint

A number of parents complained to the Ombudsman about the way a foundation school had applied the admission process and the way the appeals panel had considered their appeals.

The applications process

The school was a foundation school and so was responsible for administering its own admissions and appeals procedures. The council was required by regulation to produce a co-ordinated admission arrangement scheme for its area for the September 2008 secondary school admissions. It produced this after consultation with its Admission Forum and the other admission authorities in its area. The school approved the scheme by default – as it did not object to the proposal. The school was required to ensure that its own admission arrangements were compatible with, and did not undermine, the co-ordination scheme for the area.

The school did not comply with the co-ordination scheme. It produced its own application form and there was confusion about how the co-ordinated form produced by the council and the school's form would be considered. The school considered only those parents who had completed its form. This left 308 parents who had completed the co-ordinated form but not the school's form. The school created two new additional criteria; in area, no supplementary form and out area, no supplementary form, both of which were ranked lower than the existing criteria. So none of these applications were successful.

The appeals

The school failed to provide information to parents about why their applications had failed so they were unable to prepare proper cases for appeal. None of the members of the appeal panel had undergone any training. This was contrary to the School Admission Appeals Code which required the admission authorities to fund training and that panel members must not sit on appeal panels until they had undertaken such training. There was no evidence that the panel or the appellants were provided with any evidence of how the admissions procedure had been applied and how it affected the appellants.

The decision letters sent to unsuccessful appellants all said:

"*The panel were satisfied that the published admission arrangements had been correctly applied, and that the published admission number reached.*

"The panel listened carefully to your account of [child's forename] circumstances and although they were sympathetic to the arguments presented by you, they decided not to accept your appeal on the grounds that it would prejudice the provision of efficient education and the effective use of resources at [the school]."

All of this was contrary to the School Admission Appeals Code which stated that decision letters to appellants must:

- enable them to see what matters were taken into consideration;
- enable them to understand what view the panel took on questions of fact or law which the panel had to resolve;
- in the case of unsuccessful appellants, enable them to understand why they did not succeed;
- contain a summary of relevant factors that were raised by the parent and considered by the panel; and
- give clear and detailed reasons for the panel's decision, addressing the key questions that the panel considered.

The outcome

Following a meeting between the Ombudsman and representatives of the school in which the above failings were explained, the school agreed to:

- offer places to those children who would have been offered places if the admissions procedure had been handled correctly; and
- change its process for the next year's admissions and appeals, based on detailed advice given by the Ombudsman, including scrapping the additional application form that had caused so much confusion and ensuring appeal panel members received training.

(Case reference confidential)

D5: School admissions

Admissions appeal – clerk sought legal advice after panel's deliberation – advice unclear – not shared with appellants – new appeal arranged

The complaint

Mrs T appealed against a decision not to offer her daughter a place at her preferred school. The appeal panel upheld her appeal. However, the clerk to the panel sought legal advice after the panel's deliberation but before Mrs T had been informed of the decision. On the basis of that advice the appeal was rejected. Mrs T complained to the Ombudsman about the way the appeal was considered.

The School Admission Appeals Code

The School Admission Appeals Code says that the clerk shall be an independent source of advice (or seek appropriate advice) on procedure and on the law of admissions, giving any advice in the presence of all parties where practicable.

The code also says that decision letters should say what matters were taken into account and, if the appeal is unsuccessful, give enough information to allow the appellant to understand why, including giving a summary of any legal advice, especially if it was received after the panel retired to make its decision.

Outcome

The Ombudsman concluded that, while it was acceptable for a clerk to seek independent legal advice for the appeal panel, the note of the advice, as made by the clerk, was unclear. It was not possible to say whether the advice had been correct or whether it was accurately reported to the panel.

The decision letter made no reference to the advice, nor did it give details of what the panel had considered.

It was not possible to say what the outcome of the appeal would have been if these faults had not occurred.

The council agreed to arrange a new appeal and to ensure that any legal advice given was properly explained to all parties to the appeal so that they could scrutinise and question it if they wished.

(Case reference confidential)

D6: School admissions

Autistic boy sat grammar school entrance exam – school failed to make reasonable adjustments in accordance with DDA

The complaint

An autistic boy with dyspraxia and attention deficit disorder sat the 11-plus exam for a grammar school. His mother complained that the school discriminated against him because it failed to take account of his conditions when he sat the exam. She said she was told that the school's special educational needs co-ordinator would be informed of his conditions on the day of the test, but this did not happen, and the school recorded his conditions incorrectly.

The Ombudsman's investigation

Acting on advice from a consortium of local grammar schools, the school did not make any special arrangements for the boy to take the exam. The consortium wrongly advised that adjustments did not need to be made unless a child had a statement of special educational needs. The boy's conditions came within the definition of disability, and so the school was under a duty to ensure that he was not disadvantaged.

The boy became so upset during the exam that, part-way through, he could not see the paper and was very distraught. He failed the exam, and his mother appealed against the consequent refusal of a place at the school. The record of the appeal panel hearing shows that it did not consider the school's duties under the Disability Discrimination Act (DDA) or the Codes of Practice of School Admissions and School Admissions Appeals.

The boy was admitted to another grammar school on the basis of his SATS results and his junior school's recommendations.

Outcome

The school accepted and acted on the Ombudsman's recommendation that it should:

- apologise to the complainant and her son, and give a gift token to the value of £50 by way of compensation;
- inform applicants of how to raise potential disability issues before their child sits the 11-plus examination; and
- whenever disability issues arise in future, make reasonable enquiries and consider its responsibilities in light of the individual circumstances, the law and Government guidance.

(Report 07C03329)

D7: School admissions

Educations admission appeal – faults in hearing – inappropriate information taken into account – new appeal hearing offered

The complaint

Mr and Mrs S complained about the way their appeal for a place for their son at their preferred school was dealt with.

The investigation

The investigation identified the following problems with the appeal:

- the panel asked questions (and so considered as relevant) whether the child was registered on continuing interest lists for places at the preferred school and other schools – contrary to the Code of Practice on Education Admissions Appeals which stated that places on waiting lists must not be taken into account;
- the panel asked Mrs S to comment as a teacher on class sizes over 30 – Mrs S's profession was wrongly weighed against her in the panel's consideration of the appeal;
- the panel wrongly assumed that Mr and Mrs S would accept a place at another named school, when there were no places available at that school, and this had not been raised by Mr and Mrs S or the education authority as part of the case.

It was not possible to say whether Mr and Mrs S's appeal would have succeeded if these faults had not occurred.

Outcome

The council agreed to arrange a new appeal and to ensure that training of appeal panel members addressed the issues raised in this case. The council also apologised to Mr and Mrs S.

(Case reference confidential)

D8: School exclusions

Appeal panel did not uphold boy's exclusion but decided against reinstatement – failure to provide out-of-school education – delay in finding new school

The complaint

J was excluded from school. The independent education appeal panel did not uphold the exclusion, but nevertheless decided against reinstating him at the same school. J's father complained about this decision, and about the council's failure to provide J with appropriate education while out of school, and its delay in finding a new school.

What happened

While J was out of school, the council did not provide him with appropriate education and delayed in arranging a new school place for him. This took place at the end of Year 9 and the start of Year 10. The Ombudsman said: "All schooling is important to pupils, but the beginning of Year 10 is a particularly important term because it starts the GCSE syllabus and coursework. It is therefore a vital stage in a pupil's school career, which will influence outcomes."

The Ombudsman's view

The Ombudsman did not criticise the appeal panel's decision not to reinstate J, but commented:

"Panels should make a clear and explicit division between consideration of the exclusion case and any case why the pupil should not be readmitted to the school. If there is any doubt about the council's ability to comply with its duties, these doubts will need to be explored by the panel. This will require clear and accurate information about what the future might hold for that pupil in respect of future schooling."

On the failure to provide out-of-school education and delay in finding a new school, the Ombudsman said: "As a result, for over a term [J] had little assistance with his GCSE syllabus and his chances of obtaining good GCSE grades were adversely affected."

Outcome

The Ombudsman found maladministration causing injustice and the council agreed to:

- pay for individual tuition for J;
- pay £500 compensation to J's father and £250 to J;
- improve its procedure for dealing with out-of-school pupils;
- improve its procedures for education appeal panels;

- increase provision of alternative education for out-of-school pupils and to take further action to prevent exclusions; and
- prevent delays in finding full-time education for out-of-school pupils.

(Report 07A09449)

D9: Special educational needs

Girl with autism – transfer to secondary education – recommendation for residential school removed from statement

The complaint

Mr and Mrs T have three children, one of whom, L, was severely autistic with associated communication difficulties and had a statement of special educational needs. They complained about the way a council handled L's transfer to secondary education.

What happened

At an annual review, professionals unanimously recommended that L should attend a residential school from the point of transfer to secondary education, as her needs could not be met locally. At the time, her parents were appealing to the Special Educational Needs Tribunal for that placement.

Later that year, L's social care needs and those of her family were assessed and a recommendation made that L's needs should be met outside the home, in a setting where she would receive 24-hour supervision and care, with an educational programme integrated into her life both at school and outside. Four months later, when the parents enquired why this was not in place, the council said that the recommendation should have been removed from the draft report before it was issued, but had not been. The council considered that a support package already in place met L's needs, but did not explain how the need for a 24-hour curriculum could be met without a residential school placement. No clear written policy was in place to support this view. A review of the core assessment was carried out which, while identifying unmet needs for respite care, made no additional provision above what was already in place.

Meanwhile L did not settle at the local secondary day school she started in September, and in January refused to attend school. She remained at home until the following September, at which point she obtained a place at a residential special school. In the meantime, the council offered little further support and in particular, no offer of further respite care was made until the May of that year. During this period, L's health and wellbeing, as well as that of her parents and siblings, suffered significant adverse effects.

The Ombudsman's view

The Ombudsman considered that the council's removal of a recommendation from a core assessment without full and proper consideration of the impact of that amendment, and its failure to ensure that the needs of L and her family were adequately met over a period of many months, together with the lack of a clear written policy that the parents could challenge through use of the statutory complaints procedure, was maladministration. But for this, the needs of L and her family would have been met either through a residential school placement or by some alternative form of provision.

The Ombudsman said:

"…education and social care professionals did not work together effectively with one another and with the health care professionals involved, to ensure that not only [L]'s needs, but those of her parents and siblings were met." He added "The failures here had significant consequences for the health, happiness and wellbeing of the whole family, as well as for [L]'s development at an important stage of her life."

Outcome

The Ombudsman found maladministration causing injustice and recommended that the council should:

- apologise to Mr and Mrs T;
- pay them £10,000; and
- review its administrative arrangements to prevent a recurrence of the maladministration.

(Report 06B04654)

D10: Special educational needs

Failure to ensure boy's education continued following move between care homes in different council areas

Background

This complaint involved two councils and a looked after child who had a statement of special educational needs (SEN). The complaint was that the councils had failed to ensure the child's education – and his special needs provision – continued following his move from one council area to the other.

What happened

The child, O, was in the care of council L. In January 2006, following the failure of a number of placements in the area, O moved to a private residential placement in council C's area. As a result, he could no longer attend the school named in his SEN statement. However, neither council made arrangements to ensure O's education continued.

Council L did not inform council C that the child was moving into the area and needed a school place that could satisfy his special educational needs.

Council C was aware that O had moved into the area in February 2006. It had been contacted by the children's home and had sent a message to council L asking for information. Council C only started to approach educational establishments four weeks after having received O's file in March 2006. Record keeping was poor so it was not possible to say what other action council C took and when.

Despite a decision at a looked after children review on 31 March 2006 that council L's social service staff should contact council C to progress the issue of finding suitable education provision, there was no record of any such contact. In addition, council L failed to consider alternative methods of providing O with some education while awaiting the identification of a suitable placement. It did not agree to fund home tuition until 26 June 2006.

A suitable placement was identified for O at the beginning of May 2006. However, council L did not approve funding until 27 July 2006, after internal disagreements between departments and despite being informed in June that the Department for Children, Schools and Families had considered the funding to be council L's responsibility.

The home where he was living made some provision (10 hours home tuition per week) from June 2006 and O was eventually offered a school place from September 2006. He was without adequate education between January and September.

The Ombudsman's conclusions

There were failures by both councils to ensure that O received an adequate education following his move. Council L was tardy in providing information to council C and in accepting responsibility for funding O's education. Council C took too long to search for a suitable placement. As a result, O did not receive any education between January and June 2006, and between June and September he received only 10 hours home tuition per week.

The outcome

Council L agreed to make a payment of £2,000 and Council C agreed to pay £500. The money would be held in a trust administered by council L until O reached the age of 18, and was to be spent on additional education or materials to help O in his choice of career or training.

(Case reference confidential)

D11: Special educational needs

Failure to provide assessment of child covering educational, social and psychological needs

Background

Mrs L had adopted K following the death of his mother. K had educational and social special needs. Mrs L found a school with a flexible boarding arrangement that provided educational and psychological assistance. The school was independent. In September 2005, when Mrs L secured a place for K, it was not registered with the Department for Schools, Children and Families as an independent special school. K started attending the school in September 2006. Mrs L funded the placement using the adoption allowance and a bursary from the school.

What happened

Mrs L first requested a full assessment of K's educational and social needs in March 2006. She also requested a meeting. The council replied to her request saying that it considered that K's educational needs could be met in a mainstream school. A meeting was held on 16 June involving representatives of both councils (the council that had arranged the adoption and the council where Mrs L lived). It was agreed that enquiries would be made about the possibility of joint funding from both councils and that an educational psychologist would update an assessment that had been done three years earlier. This update was not done until 23 April 2007, shortly before the case was to be considered by the Special Educational Needs and Disability Tribunal (SENDIST). Mrs L had appealed against the council's decision not to prepare a statement of special educational needs. The tribunal ordered the council to prepare a statement.

When the draft statement was prepared in August 2007, it did not name the school that K was by then attending. It named a mainstream school. Mrs L indicated that she intended to appeal and complained that her request, made in March 2006, for a full social and educational assessment had not been met. She was concerned that the departments and the two councils involved were not communicating properly. The council replied to her complaint saying she had not made a referral for social care assistance/assessment and so social care had not been involved.

The case was considered by the Joint Commissioning Panel (involving social care and education) in November 2007. Although the education department maintained the stance that K could be educated in a mainstream school, the conclusion of the panel was that the independent school was meeting K's educational and social needs and the placement should continue. The council then had to check the OFSTED report, and the safeguarding arrangements in place for the school, and then obtain the consent of the Secretary of State. The council received this consent in late January 2008 and the statement naming the school was finalised. Funding was backdated to 1 January 2008.

The Ombudsman's conclusions

The Ombudsman was in no doubt that Mrs L had first requested an assessment of K's social and educational needs in March 2006. The case was not considered by a joint commissioning panel until November 2007, 17 months later. The Ombudsman considered that the case should have been considered at the panel meeting held in July 2006. Had this been done, it was likely that the panel would have made the decision to fund K's placement from September 2006 rather than January 2008.

In recognition of this failure the council where Mrs L lived agreed to:

- pay Mrs L £3,000: £2,043 was the amount she had had to contribute towards funding K's place between September 2006 and January 2008; and the remaining was for her time and trouble and the cost of some legal advice that she had sought to help her to pursue the case;
- apologise to Mrs L; and
- produce a lessons learned report for consideration by the council's standards committee.

(Case reference confidential)

D12: Special educational needs

Successful SENDIST appeal on named school in statement of special educational needs – suspicion that family not living at property they owned in the area – council refused to take responsibility for boy's education

The complaint

Mr H complained that a council did not comply with a ruling of the Special Education Needs and Disability Tribunal (SENDIST) that his younger son, who has special educational needs, should attend a mainstream secondary school in its area.

What happened

Mr H won an appeal to a SENDIST about the secondary school to be named in his younger son's statement of special educational needs. Almost immediately afterwards the council's education officers became suspicious that Mr H's family was not actually living at the property they owned in the council's area. The council refused to take responsibility for the younger son's education.

Mr H provided full information about his circumstances and living arrangements to the council tax service, which accepted that the family was using their property in the area as their main

residence. When the council's legal department subsequently made enquiries of Mr H, he declined to send it the same information he had already provided, but twice directed it to the council tax section. The legal department did not contact the council tax section and the education service continued to refuse to take responsibility for the boy's education.

The council would not accept responsibility for the boy and did not comply with the law until the Ombudsman began her enquiries. As a result, the boy lost almost a year of education at the school specified in his statement of special educational needs, his parents paid for private tuition, and they experienced stress and anxiety in trying to resolve the issue.

The Ombudsman's view

The Ombudsman said:

"As a result of the council's actions [Mr H's son] has missed a year's attendance at the secondary school that the SENDIST ordered should be named in his statement. A reasonable authority would have placed prime importance on the child's welfare; supported [Mr H's son]'s admission to the school; fully considered all the information available to it; made enquiries of Mr H and then, if necessary, worked to establish which LEA was responsible for [Mr H's son]. No reasonable authority would have relied on such insubstantial information to make decisions about a vulnerable child as the council has about [Mr H's son]."

Outcome

The Ombudsman recommended that the council should:

- accept that it has no justification for its claim not to be responsible for Mr H's son;
- discuss and agree with the school and the parents whether any additional provision could be made to help their son 'catch up' on the year's schooling that he has missed;
- reserve a sum of money, equivalent to the cost of educating Mr H's son at the school for a year, in a fund until he has completed year 11 and then deploy the fund on any additional educational provision that the school and an educational psychologist recommend as being beneficial;
- pay Mr H £1,000 in recognition of his anxiety, stress, time and trouble; and
- pay Mr H a further £655 to reimburse private tutoring fees for his son.

(Report 07C03447)

D13: Out-of-school education

Failure to follow policy – failure to provide home tuition or alternative education for child with mental health problems

The complaint

Mrs M made a complaint about the way the council dealt with her son J when informed that, due to his mental health problems, he would be unable to attend school.

The council's policy

The council's policy stated that pupils with medical needs should not be at home or in hospital for more than 15 working days without access to education. It also stated that pupils with long-term illnesses should have access to education, as far as possible, from day one.

What happened

On 27 August 2007 Mrs M wrote to the council to explain that her son would not be returning to school in September because of mental health problems. The Education Welfare Officer (EWO) replied saying she would contact Mrs M when she had received information she had requested from J's psychiatrist. Having received confirmation from the psychiatrist that J could not attend school, the EWO contacted the school to request a referral for home tutoring. This was received on 25 September.

There then followed a series of multi-agency meetings and correspondence regarding provision for J, including a complaint from Mrs M in January 2008 about the lack of progress. The council wrote to Mrs M on 5 February to apologise for the delay in setting up a meeting to discuss home tuition. The meeting took place on 11 February, when it was decided that home tuition was inappropriate and it would be better for J to attend a local education centre. On 13 February J began attending one-and-three-quarter-hour sessions twice a week. The records indicated that the intention was to increase these sessions once J had settled in. The sessions were not increased. J was a year 11 pupil and was unable to take any public examinations in 2008 because of his absence from school.

The Ombudsman's conclusions

The Ombudsman's investigator was critical of the council for the delay between September 2007 and February 2008 in providing education for J, and for the failure to consider increasing the provision that he received after February 2008. Because of J's level of illness and anxiety, it was not possible to say that he would have been able to take exams if the provision had been made sooner. However, he did lose educational provision at a significant time in his life.

The outcome

In recognition of the failures identified, the council agreed to:

- make a payment of £2,000 to J for him to use for education or training in his chosen career;
- make a payment of £500 to Mrs M in recognition of the distress caused to her; and
- take action to ensure that staff dealing with children who are out of school are aware of the council's policy and how it should be implemented, to avoid a similar situation arising.

(Case reference confidential)

D14: Out-of-school education

Failure to take prompt action following child's "informal" exclusion from school – failure to ensure adequate educational provision

Background

Mrs J's son E moved from his father's home to live with his mother in May 2007. This was in a different council area, so responsibility for provision of education transferred at the same time. E had a statement of special educational needs that was reviewed two months before his move. The review recorded that E was having difficulty in the school named in the statement and had been excluded twice. It recommended that the placement be reviewed. By June 2007, although he remained on the school roll, E was no longer attending. It was not clear on whose initiative the decision was taken, but E was informed he should not re-enter the school premises. He was effectively excluded by the school without any formal decision making and appeal process. Mrs J complained that, despite her efforts, the council failed to provide and adequate education for her son between June 2007 and July 2008.

The law and government guidance

The Special Educational Needs Code of Practice provides that, upon completion of an annual review, the council must decide whether to amend or cease to maintain a statement. It must then communicate that decision in writing to the affected parties. Had the council gone down that route, it would have been obliged to produce a draft amended statement within eight weeks.

Government guidance on educating permanently excluded pupils through home tuition recommends provision of between 21 and 25 hours a week.

The council's actions

In June 2007, the council received a report from an educational psychologist recommending that E should be placed in specialist provision for pupils with behavioural difficulties. E was removed from

the school roll on 20 July 2007, although the council did not learn of this until 9 November 2007. The council made representations to the school about its actions. From 11 February 2008, E began to receive home tuition. By this time his name was back on the school roll. The provision was for three hours a week rising to six hours.

The council attempted to find a place at a school that had specialist provision. Because of a reorganisation, and because E was a difficult child to place, there was some delay in identifying a suitable school. E was offered a place at a specialist school from September 2008.

The Ombudsman's criticisms

The council had failed to make a decision in line with the Special Educational Needs Code of Practice to amend E's statement. Although it was not notified of the removal of E's name from the school role until November 2007, the council was aware in June 2007 that the placement was not working and E was out of school. It did not pursue the school and ensure the provision of education with sufficient rigour, nor did it ensure E received the recommended amount of home tuition.

The Ombudsman recognised that there were difficulties and that the council did take some action, but that this was in the main reactive, and provision for E should have been planned and acted upon sooner.

The outcome

The council accepted the criticisms and agreed to take the following action:

- apologise to Mrs J;
- make a payment of £500 in recognition of the distress caused;
- make a commitment to meet Mrs J to agree the provision of resources of educational benefit to E up to a value of £2,500 (based on Ombudsman guidance that loss of education in relation to mainstream schools is likely to need a remedy of around £1,000 a term);
- introduce a procedure to address problems that arise when schools informally exclude pupils; and
- confirm the finalisation of E's statement naming his new school.

(Case reference confidential)

D15: School transport

Failure to properly consider appeal against refusal of free school transport – new appeal offered

Background

Mr N applied for free school transport for his daughters after he suffered an illness that affected his sight and left him unable to drive. He also lost his job and got into financial difficulty. He had chosen the girls' school partly on the basis that he could drive them there on his way to work. He applied to the council for assistance with transport costs and was refused. He lost his appeal and complained to the Ombudsman about the way the appeal was considered.

The council's policy

The council's policy was to grant free school transport to the catchment or nearest school if it was more that three miles away from the family home. The council also had general discretion to provide assistance with transport, and a policy of considering individual applications if a parent could not secure attendance through medical or geographical reasons. The council delegated all decisions relating to individual circumstances to its admissions board.

The appeal

The council sent a letter to Mr N saying that the reason his application had been refused was that his children were not attending the nearest school. It did not explain that both the nearest school and the school that Mr N's children attended were within three miles of the home. The letter stated that appeals would be considered in exceptional circumstances, usually where there was significant financial hardship, the journey was over the statutory distance and there were compelling circumstances. However, the council's policy on the use of its discretionary power did not say this; in particular there was no reference to the statutory distance.

Mr N based his appeal on his illness, his severe financial problems and on the argument that it would be unfair at this stage in their education to move the girls to the catchment school.

The minutes and handwritten notes of the appeal and the decision letter made no reference to consideration of anything other than the fact that children were attending a non-catchment school as a result of parental preference. They did not refer to the case presented by Mr N, nor to the fact that both catchment and non-catchment schools were within three miles of the family home.

Conclusion

Because the evidence suggested that Mr N was not given adequate information and that his appeal was not properly considered, the council agreed to arrange a new appeal, and, if the appeal was successful, to backdate the free transport to the date of the original application.

(Case reference confidential)