

Report

on an investigation into
complaint no 11 007 324 against
London Borough of Hillingdon

5 April 2012

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Key to names used

Ms Marr	the person affected
Jamie	her son

The law generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names of the people involved.

Report summary

Subject

The parent of a 14-year-old boy was persuaded by the school to remove him from the roll. He was then without a school place. Applications to other schools were unsuccessful. The boy was left without a school place, or other provision, for nearly two and a half school terms. The Council registered his case on its computer system but the procedures for children out of education, including the Fair Access Protocol, were not applied properly.

Finding

Administrative fault causing an injustice

Recommended remedy

That the Council should review its procedures, including the Fair Access Protocol, to ensure that children without a school place are identified, found a school place or other suitable provision as soon as possible.

The person affected should receive £2,500 compensation.

Introduction

1. Ms Marr complained to the Ombudsman about the way the Council dealt with the education of her son, Jamie.
2. Jamie, who was born in April 1997, is now 14 years old. He attended a mainstream secondary school (School A) where his behaviour was causing some concern. He left the school in December 2010 and did not attend school or an alternative educational setting until January 2012. The circumstances, including the Council's role in ensuring the provision of education for children of compulsory school age in its area, are the subject of this report.

Legal and administrative background

3. My role is to consider complaints where there is some evidence of administrative fault which may have caused an injustice to the person affected. Administrative fault may include delay; a failure to follow the law, government guidance and the Council's procedures properly, or a failure to take action when required. Where an injustice has been caused I will explore what can be done to put matters right and recommend a remedy in appropriate cases.
4. I cannot consider complaints where an alternative way of obtaining a remedy is available by way of an appeal to a statutory tribunal and it is reasonable for the person concerned to use it.
5. Within the terms of the Local Government Act 1974 Schedule 5, as amended, I am unable to consider complaints about the internal affairs and management of schools and colleges. The Apprenticeships, Skills, Children and Learning Act 2009 allows me to investigate complaints about schools in some local authority areas, and the London Borough of Hillingdon was included in the first group of those authorities. However, schools that have become academies or are in the process of acquiring academy status at the time of the complaint to me are not within my jurisdiction, except in relation to complaints about admissions. School A became an academy during the course of this investigation and for that reason I have been unable to consider any complaint about the actions of School A in removing Jamie from the school roll.
6. The Council has a centralised admissions system which applies to all schools in the area, including academies. It covers admissions made outside the normal admissions round. In the case of an application for a community school the Council's admission team will make the decision, and where the school is its own admission authority, the application will be sent to the school. Admission applications and school responses are tracked on the Council's computer system.

7. Statutory guidance on school admissions is provided by the School Admissions Code 2010 which is made under the School Standards and Framework Act 1998, as amended. Some aspects of the Code are mandatory for councils and schools which are admission authorities. Authorities are expected to take account also of those aspects of the Code which are advisory. The following paragraphs of the code are relevant to this complaint.

- 3.22: all applications outside the normal admission round must be co-ordinated by the home authority. In order for this aspect of co-ordination to be effective, schools that are their own admission authority must communicate the availability of places to the local authority when requested.
- 3.23: Applications made outside the normal admissions round must be considered without delay and a formal decision either to offer or to refuse a place must be made and notified to the applicant.
- 3.25: Local authorities must handle late applications and arrangements for admissions outside the normal admissions round in accordance with the co-ordination scheme in force at the time.
- 3.31: Authorities must not refuse to admit a child, in or outside the normal admission round, on the basis of their poor behaviour elsewhere (unless he has been permanently excluded twice).
- 3.32: Exceptionally, a school may refuse to admit a child outside the normal admissions round, where the governing body considers that the admission of a child with challenging behaviour would prejudice the efficient use of resources, and where one of a number of possible conditions applies (one being that the school is in or has recently come out of special measures).
- 3.41: Governing bodies of community and voluntary controlled schools must implement any decision made by the local authority relating to the admission of children unless the statutory exceptions apply.
- 3.44 to 3.47: All local authorities must have a Fair Access Protocol in order to ensure that children who live in the home authority, especially the most vulnerable, are offered a place at a suitable school as quickly as possible, and that all schools in the area admit their fair share of children with challenging behaviour. All schools and academies must participate in the protocol. Local authorities must ensure that all children who arrive outside the normal admission round and who may have difficulty securing a school place are covered by the protocol.
- 3.38 to 3.39: Under section 96 of the School Standards and Framework Act 1998 the local authority may direct the governing body of a foundation or voluntary aided school in its area to admit a child, where he has been

refused admission by every school within a reasonable distance of his home. Where an academy refuses to admit a child, the local authority can refer the matter to the Secretary of State.

8. Within the terms of the Education Act 1996 Section 19, as amended, the Council has a duty to make suitable full time provision for children who are without a school place, either because they have been excluded or for other reasons. For a child of Jamie's age full time provision would normally equate to 25 hours a week.
9. Parents have a right to express a preference for a school for their child. When a place is refused they have a right of appeal to an Independent Appeal Panel, which constitutes a statutory tribunal. In view of this right the decision to refuse a place is outside my jurisdiction (although I may investigate a complaint about the conduct of the Appeal Panel once an appeal has been heard).
10. The Council has adopted a Fair Access Protocol, the purpose of which is to ensure that access to education is secured for pupils who have no school place but for whom a place at a mainstream school or suitable alternative is appropriate, and to ensure that all schools admit their fair share of pupils with challenging behaviour, including those excluded from other schools. The Protocol says that the needs of the pupil are paramount and must be considered in terms of what is best for them, whether they are ready for mainstream school, and which school would best be able to meet their needs. Pupils identified under the Protocol will be given priority over other pupils on the waiting list and where appropriate schools will exceed their admission number in order to admit them. The grounds on which a pupil will be identified as eligible for placement under the Protocol include those where children have been out of education for longer than one term, and those seeking admission to a school in the borough who have failed to secure a place after all the established procedures have been followed.

Investigation

11. My Investigator has discussed the complaint with Ms Marr, seen the relevant Council records and interviewed Council officers.

The key facts

12. In November 2010 Jamie was in year 9 at School A. The school was in the process of converting to academy status at that time and so it is now outside my jurisdiction (see paragraph 5). Jamie's behaviour had been causing concern for some time and a number of strategies had been tried to improve it, including a managed move to another school. However, the move was unsuccessful and Jamie returned to School A. Ms Marr says that she was advised by a senior member of staff at School A that Jamie was at risk of permanent exclusion but that if she took him off roll voluntarily he would avoid having an exclusion on his record. She thought that would mean it would be easier to arrange a transfer to

another school, and so she agreed. The Council's record shows that Jamie was registered on its computer record as being educated at home. Ms Marr says that home education was never her intention for Jamie.

13. Ms Marr got in touch with Parent Partnership for advice. The Parent Partnership Officer (PPO) explained to my Investigator that the organisation, while receiving Council funding, has an 'arms length' role in providing advice to parents. She explained to Ms Marr that, having removed Jamie from school, she was now responsible for his education. The PPO was concerned about the school's actions. She sent an email on 20 December 2010 to the Council's Pupil Tracking and Transfer Officer (PTTO) who deals with children who do not have a school place. Ms Marr says she valued the PPO's help and advice.
14. The PTTO checked which schools were nearest to the family's home, and discussed the position with Ms Marr. Her preferred option was for Jamie to return to School A. The PTTO advised her to challenge the position by writing to the school to ask for Jamie to be reinstated, and if necessary, making a complaint to the governors. The Officer's view was that the school was wrong to have advised Ms Marr to take Jamie off roll rather than to seek formally to exclude him. If he had been excluded the Council's procedure required that alternative provision would have been made for him.
15. Ms Marr submitted an application for a place for Jamie at three local schools (schools B, C and D). Only School B is a community school for which the Council is the admission authority. The other two schools are responsible for dealing with their own admissions. The applications were sent to the schools (or in the case of School B, dealt with by the Council's Admissions Team) on 14 December 2010. All three schools were oversubscribed and had waiting lists for Jamie's year group. The PTTO suggested a fourth school (School E) which had places available. However, because it had been in special measures it was entitled to refuse to accept excluded pupils or those with a history of difficult behaviour. In answer to the question on the admission form about whether her son was currently attending school Ms Marr put 'no'.

16. The Council has provided a table showing when the application was input on the computer for each school and when the decision was made.

School	Pupil entered on system	Date application sent to school	Date offer response recorded
B	09/12/10	Dealt with by admissions team	15/12/10
C	09/12/10	14/12/10	08/04/11
D	09/12/10	n/a	08/04/11
E	09/12/10	14/12/10	10/05/11
A	31/03/11	04/4/11	12/04/11
F	10/05/11	13/05/11	18/07/11

17. By April all the schools, except School E, had confirmed that they could not offer a place. Ms Marr wrote to the governors of School A to explain her concern about what had happened and the difficulties she now faced. The reply from the Chair of the Governors stated that she had been advised about other options at the time. Ms Marr then made a fresh application for a place at School A. It was refused, but Jamie was placed on the waiting list. Jamie went to the School personally to explain that he regretted his past behaviour and wanted to return. Ms Marr was hopeful that he would be offered a place when one became available.
18. At the beginning of May 2011 the PTTO spoke to Ms Marr about allocating Jamie an available school place. The nearest school with a place was School F, a foundation school which deals with its own admissions. Ms Marr was advised to submit an application. Initially she was reluctant to apply because it is some distance from their home and had links with School A, but she was persuaded by the PTTO to do so. What appears to have happened is that School F refused to offer a place on the grounds of Jamie's past behaviour but this was not recorded on the Council's computer record, which still showed the application as pending. However, on 26 May 2011 an Admissions Officer spoke to a member of staff at the School F who confirmed that a place would not be offered, on the grounds of Jamie's past behaviour. The Officer said this was not a correct criterion on which to make the decision, but no further action appears to have been taken. The PTTO told my Investigator that the Council could have challenged the school but

it was not clear that Ms Marr really wanted Jamie to go there. Ms Marr did not appeal although she was advised by Parent Partnership of her right to do so.

19. No school place was offered for Jamie and he remained without any educational provision for the rest of the summer term. Ms Marr complained to me about this. On 18 July the PTTO wrote to Ms Marr to say that the School F application had been unsuccessful and 'as a result all your school preferences do not have places available'. This was incorrect as School F had not refused on the grounds that it had no place. Ms Marr was advised to apply for schools in neighbouring boroughs (although there was no indication as to whether there would be places available).
20. Meanwhile, Jamie was seen by a Clinical Psychologist. Her report was available in July 2011. She identified a number of difficulties with Jamie's learning and assessed his reading comprehension as equivalent to that of a child aged nine. Within her recommendations she said: *'His age equivalent scores ... indicate that he is a long way behind his chronological age in terms of his learning. As he has now effectively missed a year of school it is extremely unlikely that he will be able to return to a mainstream school without significant individualised support'*. The Psychologist went on to recommend that Jamie would benefit from small group tuition and a modified curriculum, and would require a reintegration programme to enable him to successfully return to mainstream school.
21. The PTTO explained to my Investigator that when this additional information was received about Jamie they had to consider other options for meeting his needs. There was some concern that he would find reintegration into mainstream school very difficult. In its response to my enquiries the Council said that alternatives, including a specialist speech and language unit, and the Pupil Referral Unit, were being considered. At the beginning of the new school year in September 2011 the options still were being explored. Jamie was offered a place at the Pupil Referral Unit on 30 September but Ms Marr still hoped he would obtain a place at a mainstream school and preferred to wait until one became available. In early December 2011 Ms Marr told my investigator that Jamie had been offered a place at School B and she was hopeful that he would be given a date to start in January 2012. Ms Marr said by that time Jamie would have missed a whole year of school.

The views of Council officers

22. The Parent Partnership Officer made the following comments to my Investigator at interview. She first met Ms Marr in December 2010 and over the following months provided her with a great deal of advice and support. The PPO felt that School A's actions which led to Jamie being removed from the school roll were neither right nor lawful. She understood that Ms Marr had agreed to remove Jamie in order to avoid his permanent exclusion but the result was that she unwittingly became responsible for his education. If Jamie had been permanently

excluded the Council would have been obliged to provide full time suitable education from day six following the exclusion. She encouraged Ms Marr to challenge the decision with School A's governors. The PPO liaised regularly with the Pupil Tracking and Transfer Officer who kept her informed of the position in respect of school applications. When School F refused a place on the grounds of Jamie's behaviour the PPO advised Ms Marr to appeal.

23. The Pupil Transfer and Tracking Officer explained that she deals with referrals of children who either had no school place or have ceased to attend their allocated school. She encourages parents to apply for an alternative school place and works with them until the child has started attending school. Children who fall into certain groups will be covered by the Fair Access Protocol (see paragraph 10). But the Protocol will only come into play where the admissions team has been unable to place the child. If School A had excluded Jamie he would have been identified immediately and provision made for him. This did not happen because Ms Marr had removed him voluntarily, and Jamie was incorrectly registered on the Council's computer system as being educated at home. The PTTO worked closely with Parent Partnership. Ms Marr was advised to challenge School A's decision. The school later indicated that it would view a fresh application favourably but in the event refused it because no place was available. It is open to the admissions team to offer a place at the nearest school with places and in May 2011 School F was identified. The school refused to accept the application although it should not have been allowed to do this for the reasons given. The PTTO said that the Council could have challenged the school's decision but it was not clear whether Ms Marr wanted Jamie to go there. The Council then received the Clinical Psychologist's report which cast doubt on whether Jamie would manage in mainstream and they started to look at other options. The Officer explained that the people involved with Jamie had really tried to do their best for him.
24. My Investigator also discussed the complaint with the Senior Manager for Special Educational Needs, Behaviour and Attendance, who drafted the Fair Access Protocol. She explained that the procedure had not been finally agreed by Council members. Relevant pupils are considered by a panel, chaired by a head teacher, which meets every three weeks. The previous Chair took the view that the panel should deal only with children who had been excluded and with managed moves. There is now a new Chair. The Senior Manager had no direct involvement with Jamie's case until recently when she began overseeing it. She was then actively looking at alternatives for Jamie. She said the evidence suggests that, whilst Jamie's behaviour is problematic, it is far from extreme. The Council has difficulty in persuading schools, which are their own admission authorities, to accept in-year admissions.
25. In response to the draft of this report the Council explained that it revised the Fair Access Protocol in 2010. It recognizes that the Protocol and the arrangements for delivering it have not been as effective as they should be. Schools are being

consulted on a revised Protocol. The aim is to make accountability and timescales clearer.

26. The Principal Admissions Officer told my Investigator that all the schools Ms Marr expressed a preference for were oversubscribed except School E, which having been in special measures did not have to offer a place. Later, when School F refused a place, the Admissions Officer advised Parent Partnership that the school could not do this, and Ms Marr then was advised to appeal. Jamie's case would not have been referred to the Fair Access Protocol because he had not been excluded. Children who were not at school for reasons other than exclusion were not being referred to the panel at that time. There was also a question about Jamie having additional needs and this had to be clarified. Other agencies became involved. Schools cannot be required to take pupils unless the extent of their individual needs is clear. The Principal Admissions Officer said that School A should have been asked to take Jamie back at the time. This might have required the matter to be escalated to a high level, possibly to the Director.
27. In response to the draft of this report the Council said that it is not the case that schools cannot be required to take pupils unless the extent of their needs is clear. It suggested that the officer's statement about this may have been taken out of context. In fact, the Council tries to assist schools when placing pupils by providing relevant information, such as the previous school's details. The allocated school then can avoid unnecessary delay in the child starting. The Council also explained that it is looking at how to escalate cases, for instance via directions, or requests to the Secretary of State to direct, where all other procedures have failed to secure a school place. Furthermore, the Council is making arrangements to provide tuition so that pupils do not miss education for extended periods should difficulties arise in securing a school place.

Ms Marr's view

28. Ms Marr says that she followed School A's advice in removing Jamie and genuinely believed she was doing the best thing. She thought it would be easier to arrange a transfer to another school if he did not have an exclusion on his record as the full implications of this course of action were not explained to her. She applied immediately for four schools but none offered Jamie a place. She was grateful for the PPO's advice which she found helpful. But, as time went by Jamie became more demotivated and depressed. Nothing came of her complaint to the governors of School A. She feels the School let Jamie down. When School F refused a place she decided not to appeal because Jamie was reluctant to go there and she felt it was not the right school for him. Jamie has problems with some areas of learning which affect his behaviour. Some alternative options have been considered but she would like Jamie to go to a mainstream school. She is pleased that he now has a place at School B.

Conclusion

29. Jamie has missed a full year of his education. The question for me to decide is whether maladministration by the Council was a cause of this, and if so, the extent to which it was responsible.
30. Jamie was removed from school by Ms Marr. I cannot investigate what happened at School A but I have no reason to doubt that she acted on the advice she was given. The loss of the school place was not as a result of action by the Council. However, without delay Ms Marr then made an application for an alternative school place and explained the position to Council officers. From that point, in December 2010, when the Council became aware that Jamie was without a school place, it was responsible for ensuring he missed as little education as possible, either through securing a school place for him or making suitable alternative provision, and for keeping the situation under review.
31. The Council took certain actions. Ms Marr's applications were sent to the schools she named and progress was tracked on the computer system. Ms Marr was advised to challenge School A's decision and ask for it to reinstate Jamie. She received support and advice from the PPO for which she was grateful. These actions, though, did not result in Jamie being offered a school place and fell a long way short of what the Council should have done to fulfil its obligations to Jamie as a child without a school place.
32. Underlying the Council's approach was the belief that, given the circumstances in which Jamie lost his school place, it was Ms Marr's responsibility to ensure he received education, not the Council's. This is clearly the understanding of the officers involved all of whom have said that it would have been a different matter if Jamie had been permanently excluded. He then would have been identified and provision would have been made for him. However, the relevant law (see paragraph 8) applies not only to children who have been excluded but also to those who are without a school place for other reasons. Once the first round of admission applications failed to result in an early offer of a school place, I can see no reason why Jamie was not referred for alternative provision until a school place could be identified. I believe that the failure to make such provision from the start of term in January 2011 until the point in October when alternative provision was offered, was maladministration.
33. I turn now to the way the Council sought a school place for Jamie. I recognize that the Council is dealing in the main with schools for which it is not the admissions authority (all except School B). While the Council operates a centralised school admission procedure it sends the applications to schools which then make the admission decisions. Nevertheless, the Council has a Fair Access Protocol which all schools in the borough are expected to participate in. The aim is to ensure that no child is left without a school place. By the end of the

spring term in April 2011 Jamie had not been at school for over a term but he was not dealt with under the procedure. At that stage School F was approached but refused Jamie a place, for reasons that are disallowed by the School Admissions Code. I have seen no evidence that the Council challenged the School's decision, but I note that Ms Marr chose not to appeal. Neither did the Council challenge the decision of School A not to reinstate Jamie. Once the school had academy status the matter would have had to be referred to the Secretary of State for Education.

34. There clearly were a number of obstacles to obtaining a school place for Jamie. The Fair Access Protocol is intended to provide a route into school for children for whom the normal processes have failed. It was not applied in Jamie's case and, in the light of somewhat conflicting accounts of how the protocol operates, I have no confidence that it is working effectively. I believe that the Council's failure to take the necessary steps to identify a school place from April 2011 onwards was maladministration.
35. Further information was provided about Jamie indicating that he might have special needs which would make it difficult for him to settle into mainstream school. Other options were considered, including the Pupil Referral Unit and a speech and language unit. Whilst it was reasonable for the Council to consider what would be the best kind of provision for Jamie in the light of this information it was not reasonable for him to remain without a school place or other provision. The Council has confirmed that he could have attended the Pupil Referral Unit from the beginning of October 2011 and in reaching my conclusion I have taken account of this offer of alternative provision. However, the evidence available indicates that Jamie's needs were neither particularly complex nor exceptional. They are to be met through the provision of additional support at a mainstream school from now on and it is not clear why these arrangements could not have been made earlier.
36. For the reasons I have explained in paragraphs 30 to 35 I would summarize as follows the administrative fault by the Council in dealing with this case:
 - Failing to make suitable alternative provision while Jamie remained without a school place from January 2011 to October 2011, a period approaching two and a half school terms;
 - Failing to take all necessary steps to secure a school place from April 2011, including a failure to apply the Fair Access Protocol;
 - Failing to have an effective, functioning Fair Access Protocol,
 - Failing to challenge Schools A and F on their admission decisions or to consider taking these matters further.

Remedy

37. Jamie received no education for a year which is a very significant disadvantage. I believe this period could have been substantially reduced if the Council had dealt with the matter properly. I find, therefore, that the Council's maladministration caused an injustice. I recommend that the Council should pay Ms Marr £2,500 to be used for Jamie's educational benefit to compensate for lost educational provision for two and a half terms.
38. I recognize also that Ms Marr has been put to considerable time and trouble in dealing with the matter, pursuing her complaint and dealing with Jamie while he was without a school place. I have decided not to recommend that any additional sum is paid to her, however, because she had an opportunity to appeal against the decisions of the schools which refused Jamie a place, and in the case of School F was expressly advised to do so. She did not appeal, and thereby did not pursue an avenue which might have led to the matter being resolved earlier.
39. I have asked the Council to review its procedures to ensure that children who do not have a school place are identified and suitable provision is made for them without delay. This will apply to children who have been excluded and those who have no place for other reasons. My interpretation of the Council's responsibilities is set out in the Ombudsman's recent focus report (*'Out of school, out of mind? How Councils can do more to give children out of school a good education'*).
40. I note the Council's comments on its review of the functioning of the Fair Access Protocol to ensure that it deals properly and effectively with all those children for whom a school place has not been identified promptly through the normal admissions procedures. I have asked the Council to update me on its progress in reviewing the Protocol and its other procedures within three months.

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