

Report

on an investigation into
complaint no 12 000 717 against
London Borough of Croydon

14 November 2012

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The Local Government Act 1974, section 30(3) 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.

Key to names used

Miss Rose, the complainant

Report summary

Subject

Miss Rose moved to the Council's area and made an in-year application for school places for her child and her sister for whom she has parental responsibility. The Council made no educational provision for either child for more than six months. The Council's failure denied both children education at a time when they were in Year 10 and should have been studying for GCSE qualifications. This created unnecessary anxiety for the children and Miss Rose. The need to catch up six months of missed work required for public examinations also created additional pressures on both children after they returned to education.

Finding

Maladministration causing injustice, remedy agreed.

Recommended remedy

The Council has offered to apologise to Miss Rose and both children. It has also offered to pay the family £6,500. I consider these are appropriate elements of remedy for the injustice caused.

The Council has also reviewed its procedures to speed up the allocation process and to ensure cases are passed to fair access panels where it cannot allocate a school place within 20 school days.

The Council has also agreed to amend its procedures to ensure it meets its legal duty to offer alternative educational provision once the 20-school-day period for allocating places in the agreed London Boroughs' policy has been reached.

Introduction

1. Miss Rose complains that the Council failed to make educational provision for her child and her sister for whom she has parental responsibility for six months after the family moved into the its area.

Legal and administrative background

2. The Ombudsman investigates complaints of maladministration causing injustice. When I find maladministration causing injustice, I can ask the Council to take action to remedy that injustice.
3. The Education Act 1996 provides that where a child is out of education by reason of illness, exclusion or otherwise, a council must make educational provision for him or her. This provision must be full-time unless this would not be in the child's interests.¹
4. The London Boroughs' agreed policy is to allocate school places within 20 school days of applications being received.

Investigation

5. Miss Rose moved into the Council's area in November 2011. She applied for school places in Year 10 for her son and her sister, for whom she has parental responsibility following the death of her mother. Miss Rose's son has identified special needs, but no Statement. Miss Rose's sister has no special needs.
6. She said the Council failed to provide a school place for either child as all the schools in the area were full. She said she asked for alternative educational provision, but the Council refused to provide this.
7. The Council confirmed that it received the applications, which were dated 30 November 2011, on 5 December 2011. The Council returned the form for Miss Rose's sister as it was incomplete. However, the page to which the Council referred applied only where a child was still in school and Miss Rose's sister was not in school.
8. Miss Rose telephoned the Council on 1 February 2012 to chase up progress and added extra preferences. The Council said it contacted the schools preferred by Miss Rose in early February 2012. It made a fair access referral for Miss Rose's son on 9 March 2012. It then made a fair access referral for Miss Rose's sister on 30 March 2012.

1 Education Act 1996, s19.1

9. A fair access panel considered Miss Rose's sister's case on 15 May 2012. She started school on 11 June 2012.
10. Two fair access panels considered Miss Rose's son's case on 13 March and 15 May 2012. The Council made educational provision for him at a tuition centre on 19 June 2012. The mornings were focused on academic activities and the afternoons had a mixture of sporting, vocational and enrichment activities.
11. My investigator interviewed two Council officers on 21 June 2012. Officer A was responsible for school place planning. She had been in post since December 2011. She said the Council would normally allocate a school place in 20 school days, though this could take longer if a child had special needs. She said that a system had recently been introduced to alert staff to cases that breached the 20-day deadline. She said the Council would then refer the case to a fair access panel, but that waiting for information from former schools could cause delays. She said it would need to be clear that alternative provision was the most appropriate response before the Council offered this because it was expensive when schools were available. The Council later said cost was not a prohibitive factor and its over-riding concern was to find a placement as soon as possible. In its response to the Draft Key Facts the Council confirmed that in July 2012 15 children in its area had been out of school for over four weeks.
12. The Council confirmed it contacted the schools Miss Rose preferred in the "standard way". This caused some delay in both cases while it waited for responses.
13. Officer B had been responsible for learning access since September 2010. She said her team was involved once a fair access referral was made. She said it could take "a bit of time" to investigate, often by visiting the child at home, but that the resulting placements were better. In these cases, she said her service did not see the applications until March 2012. She felt the fair access process worked in Miss Rose's sister's case, though she said there had been some delay in the case of Miss Rose's son. In his case, the FAP held on 13 March 2012 asked for further information from his former school. An educational psychologist visited him on 24 April 2012. The Council's view in response to the Draft Key Facts was that the process had not worked well for either child.
14. The Council made no educational provision for either child between 5 December 2011 and June 2012.
15. My investigator also interviewed Miss Rose. She said her sister had had to spend three hours each evening copying up GCSE work she had missed during the six months she was without education when she started her new school. She said this included science experiments she had not done and was additional to the other homework set by the school. She said this was likely to depress her final GCSE grades. She also said the additional pressure would deprive her of chances to mix socially as she would have to work harder in order to achieve

good passes. Miss Rose said her son's academic prospects would have been less strong in any case than his aunt's. However, she said that his chances of achieving the grades he needed to follow his chosen career had been reduced. She said he had not been able to continue with the same subjects he previously studied because they were not offered at the tuition centre he was attending. She did not object to the academic provision being part-time, but she was concerned some of the other pupils had previously been permanently excluded from school when she said her son had not.

Conclusions

16. The London Boroughs' agreed policy is to allocate school places within 20 school days. This is longer than in many other areas of the country, but it is generally accepted there are extra complications in London, not least because parents may name up to six school preferences rather than three as elsewhere. The law says councils must make full-time educational provision where a child is out of school by virtue of illness, exclusion or otherwise. In the case of a child who is permanently excluded, this duty begins on the sixth school day of absence. Where the reason for absence is medical, the duty applies where the child is absent for more than 15 school days. In other cases, while there is no specified period, it would not be reasonable for a child to be denied educational provision once a council has been unable to allocate a school within the period specified, in this case, 20 school days.
17. In this case, the Council did not allocate places for either child for more than six months after Miss Rose made her in-year application. While there were reasons this was not possible, the Council should have offered alternative educational provision. It did not do so and the children received no educational provision at all until June 2012. This was maladministration.
18. The effect of the Council's failure to offer any alternative educational provision was to cause injustice in the form of unnecessary anxiety to the family that both children were without education at a time when they should have been studying for public examinations. Miss Rose confirmed her sister was obliged to spend time copying up work each evening, including science experiments she had not done. She said both children's final grades were likely to be depressed by the missed period of education. While I cannot quantify the effect on either child, it stands to reason that a child who has spent almost two school terms out of education in Year 10 will have lost almost 40% of the teaching time available across the five terms before the final examinations. I therefore consider the Council's failures also caused injustice to both children in the form of lost opportunity to make progress in their studies.

Finding

19. Maladministration causing injustice, remedy agreed.

Recommended remedy

20. The Council has offered to apologise to Miss Rose and both children for its failure to make educational provision for either child between December 2011 and June 2012. It has also offered to pay the family £6,500 for the loss of education and the time and trouble it caused Miss Rose in having to bring her complaint to me. I consider these are appropriate elements of remedy for the injustice caused.
21. The Council has also confirmed it has reviewed its procedures to speed up the process of allocating school places for in-year applications and taking cases where it cannot allocate a place to fair access panels. It has further confirmed it will amend its procedures to ensure it meets its legal duty to offer alternative educational provision once the 20-school-day period in the London Boroughs' agreed policy has been reached.



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