

Section A: Education

A1: Admissions

Importance of following the advice in the *Code of practice* for appeal committees – appellants must be given information in advance – committees should not hear evidence when parents are excluded – position of children on waiting list is not a relevant factor – importance of training

1. Mr and Mrs Banks complained that there was maladministration in the way in which the education appeal committee of a grant-maintained school dealt with their appeal against the school's decision to refuse their son admission. Their appeal was dismissed by the appeal committee.
2. The appeal committee heard 21 appeals for autumn term admissions to this secondary school. None was upheld. The Ombudsman made a number of criticisms about the way the appeal committee acted.

The *Code of practice*

3. The Ombudsman said that in considering appeals, an education appeal committee had to follow a two stage process. At the first stage, it had to satisfy itself whether prejudice to the provision of efficient education or the efficient use of resources would arise if the appellants' child were to be admitted; if it could not be satisfied that prejudice would arise, the committee had to uphold the parents' appeal. Only if the committee was satisfied that prejudice would arise should it go on to the second stage: that is, to decide whether the parents' case for admitting the child outweighed the prejudice that would arise from admitting him or her. The requirement to follow the two stage process arose from a court judgement and clear guidance about the process was given in the *Code of practice* issued by the Department for Education and Employment. The Ombudsman said of the *Code*:

"It is reasonable to expect the members of appeal committees to be familiar with its contents and to act in accordance with it unless there are good reasons why they should not. It is clear from our investigations of complaints that some appeal committees find great difficulty in understanding and operating the two stage process. Whatever those difficulties, the education appeal committee was obliged scrupulously to follow the two stage process in considering Mr and Mrs Banks' appeal. It is clear to me that the committee acted in good faith and without bias. But I am not satisfied that all the members of the committee fully understood the two stage process and complied with the guidance in the Code of practice."

Procedural faults

4. In particular, the Ombudsman found the following procedural faults:
 - The clerk of the appeal committee did not send the appellants a copy of the school's statement of the reasons for the decision to refuse the application (it appeared that the governors provided the committee with no such statement). The *Code of practice* said that this was among the documents appellants should be sent in good time before the hearing.
 - The appellants were not present when the appeal committee was briefed by the clerk before the hearings began about the school's admission policy, the criteria for admission, the number of applications received, the number of places offered, the area from which

children had been offered places on grounds of proximity and the problems caused by the shortage of school places in the borough and so on. The parents should have been allowed to hear the same information as the committee on these matters and given the opportunity to ask questions about it.

- The written statement provided by the governors merely asserted that places were offered in accordance with the published criteria and that once the places had been filled, up to the standard number, any further admissions would prejudice the efficient and effective provision of education and the use of resources for other students. The appeal committee was required to satisfy itself at what point prejudice would arise and what the degree of prejudice would be if the appellants' child were admitted. It was not sufficient for an appeal committee simply to accept the governors' assertions about this; the committee had to be seen to form its own view, having given the appellants the opportunity to make any representations on the subject. The committee's decision had to be explicit, not implicit, and it should have been expressly recorded. The Ombudsman found that the committee did not properly satisfy itself at what point prejudice would arise or properly record its decision.
- Mr and Mrs Banks were left with the clear impression that the appeal committee saw its function as being merely to consider whether the governors' admissions committee had properly applied the criteria for admission. In fact, the appeal committee's function went far wider. The matters which the appeal committee had to take into account included any representations made to it by all the parties to which it was required to give an opportunity to make representations. The

Ombudsman was not satisfied that all members of the committee fully understood the extent of the committee's functions.

- The committee had taken account of the position of children on the waiting list who would have lower priority if any appeals were upheld. But the number of applicants on the waiting list at the time of the appeals was not relevant to whether the school was full and was not a material factor to be taken into account by the committee when deciding on individual appeals.

Conclusion

5. The Ombudsman said:

"I have concluded that these procedural faults amount to maladministration. As a result, I am not satisfied that Mr and Mrs Banks' appeal was properly heard. It does not follow, however, that if there had been no procedural fault, the appeal would have been upheld; the committee might still have decided that Mr and Mrs Banks' case was not strong enough to outweigh the school's grounds for refusing admission. Nonetheless, Mr and Mrs Banks were entitled to a hearing which was without procedural fault and so they have suffered an injustice in consequence of the maladministration."

6. The Ombudsman recommended that in recognition of the injustice, Mr and Mrs Banks should be paid £100. He also said that in the light of the investigation it was clear that a review was needed of arrangements for training the members of future appeal committees so as to ensure that the procedural faults found in this case were not repeated.

(Report 97/A/821)

A2: Admissions

Importance of the *Code of practice* – committees should not consider evidence which was not available to appellants – governor member of appeal committee should not speak for the school – governors' representative should not be alone with the members in absence of appellants

1. Five sets of parents complained that the appeal committee established by a voluntary aided school governing body did not properly consider their appeals against the refusal of places for their children at the school.
2. The Ombudsman found that the appeal committee departed significantly in a number of ways from the advice contained in the *Code of practice for appeal committees*. She found maladministration in six out of the eight specific matters of complaint. She found that the appeal committee in fact arrived at decisions on the complainants' appeals which were fair and reasonable but, in some important respects, those decisions were reached by the wrong route. She commented:

"The appeal committee was fortunate that so many examples of maladministration did not apparently cause injustice to the complainants. In different circumstances the same overall approach might well have the effect of causing considerable injustice."

Membership of the appeal committee

3. One parent complained that the chairman of governors should not have been a member of the appeal committee. The Ombudsman did not uphold that complaint. The law expressly allowed governors to be members and she therefore made no criticism of the fact that the chairman of governors was a member of the appeal committee, given that he had had no involvement in the initial allocation of places at the school by the governors' admissions committee.

Information about the school's admissions criteria

4. The appeal committee had available to it three different descriptions of the school's admissions criteria: a version sent to all applicants which set out six criteria; a version sent to all appellants which set out three criteria; and a version contained in the case presented on behalf of the governors to the appeal committee which referred to two criteria.
5. The appeal committee did not question discrepancies between these various descriptions of the admissions criteria. The appeal committee should have sought clarification of this point and its failure so to do was maladministration. However, the Ombudsman was satisfied that no injustice resulted to the parents: the clerk to the appeal committee correctly advised its members not to limit themselves to the school's admissions criteria but advised them to consider fully every reason given by every parent. The available evidence indicated that the appeal committee *did* consider all the points put forward by each appellant.

The order of proceedings followed at the appeal hearing

6. The order of proceedings followed at the appeal hearings was not the order which appellants had been told would be followed and neither version followed the advice contained in the *Code* on which the clerk based his advice to the appeal committee. In the circumstances the appeal committee's

failure to follow the advice about the order of proceedings which was available from the clerk and in the *Code* was maladministration.

7. The Ombudsman was satisfied that no injustice resulted to the parents. The available evidence showed that appellants were given every opportunity to make their case. In the Ombudsman's view the outcome of the complainants' appeals would have been no different had the order of proceedings followed the advice in the *Code*.

The governing body's case to the appeal committee

8. At the appeal hearing one of the appeal committee members (the chairman of governors) was asked by the chairman of the appeal committee to speak about the overcrowding difficulties faced by the school. The Ombudsman said that the roles of the governors' representative and governors who were members of the appeal committee should be kept completely separate. It was the responsibility of the governors' representative to put the case for the governing body. It was quite inappropriate for one of the governors who was on the appeal committee to speak on behalf of the governors or the school. That was maladministration.
9. The Ombudsman was satisfied that there was no resulting injustice to the parents. They all chose to focus their arguments on the individual circumstances of their case rather than trying to persuade the appeal committee that to admit further pupils would not cause prejudice to efficient education or use of resources. The complainants all began from a starting point of accepting that the school was full.

Disclosure of relevant documents to appellants

10. The parents of three of the children complained that they did not have disclosed to them all the documents relating to their appeal which were put before the appeal committee. Specifically they said they did not have sight of the clergy references for their appeal before or during the appeal hearings. The *Code of practice* stated that appellants should be given an opportunity to comment on relevant information obtained from the governing body. It followed that, where clergy references had been obtained, the appeal committee should have ensured that the relevant appellants had an opportunity to comment on the content of those references. The appeal committee's failure to do that was maladministration.
11. No injustice resulted to the complainants. In only one case was there a clear discrepancy between the clergy reference and an appellant's evidence. In that instance the appeal committee gave the benefit of the doubt to the appellant.

Governors' representative with the appeal committee

12. The Ombudsman found no evidence to support an allegation that the governors' representative was present with the appeal committee in the absence of appellants during individual hearings.
13. However the governors' representative did take refreshment and lunch breaks with the appeal committee in the absence of any appellants. That was maladministration.
14. The Ombudsman was satisfied that no discussion about the appeals took place during the breaks and therefore that no injustice resulted to the parents.

15. The Ombudsman was particularly concerned that the sound advice from the clerk about this issue was either misunderstood or left unheeded. She said:

“There is a very real danger of justice not being seen to be done when the governors’ representative spends any time at all with the appeal committee in the absence of appellants.”

Information obtained from the head teacher of the school

16. Prior to the appeals, the chairman of the appeal committee sought an opinion from the head teacher of the school about how many extra pupils the school could accommodate. The Ombudsman said:

“The chairman of the appeal committee ought not to have sought any information from the head teacher, or indeed from anyone else, in the absence of the appellants. The fact that he did seek such information was maladministration. The effect was that he had information available to him which appellants were unlikely to have and of which the other appeal committee members were unaware.”

17. On balance the Ombudsman considered that there was no injustice to the complainants. Whilst in theory the possession of such information could have assisted the complainants in formulating an argument against the school’s evidence of prejudice, in practice they would have been unlikely to depart from the approach of arguing a case based on their own individual circumstances.

Appeal committee’s deliberations

18. The Ombudsman was satisfied that the appeal committee’s deliberations were full and fair. The decision-making

process was sufficiently rigorous and procedurally correct. There was no evidence of maladministration in the appeal committee’s handling of this part of its task.

Recommendations

19. In order to avoid the shortcomings found in this investigation, the Ombudsman recommended that appeal committees established by the governors should in future:
- satisfy themselves that the information available to them about the school’s admissions criteria was adequate to the task and consistent with the information provided to all applicants;
 - have a chairman who had received formal training and was familiar with the advice contained in the *Code of practice*;
 - give more attention to the independent advice available from the clerk and to the contents of the *Code*. This applied especially to the following issues:
 - i. the order of proceedings to be followed;
 - ii. the disclosure of documents/information to appellants;
 - iii. the need to take account only of information about which the appellants had an opportunity to comment; and
 - iv. the need to ensure that the governors’ representative at the appeal hearings was never with the appeal committee in the absence of appellants.

- ensure that the role of governors who were members of the appeal committee was kept entirely separate from the role of the governors' representative at the appeal hearings;

in particular to ensure that the case for the governors was put only by the governors' representative.

(Report 96/C/509 etc)

A3: Admissions

All places must be filled before appeals are heard – appeal committees must not consider information not available to appellants – reasons for not allowing appeals must be given

1. The parents of four children whose appeal for a place in the reception class of a voluntary aided primary school was unsuccessful complained that the appeal committee failed to follow the law or the published guidance in hearing their cases.

grounds on which it was made had to be communicated in writing to the parent.

Faults

2. After considering the written evidence submitted to him, the Ombudsman was concerned that:
 - not all the available places for the reception class had been allocated prior to the appeal hearings;
 - contrary to the *Code of practice*, the head teacher gave the appeal committee information relevant to the appeals in the absence of the parents who were, therefore, unaware of some of the information taken into account by the committee;
 - it was not clear that the committee had followed the two stage process of decision-making, (that is to consider first whether prejudice would arise if an additional child were to be admitted and secondly if that was the case, whether parental factors outweighed the prejudice); and
 - no adequate reasons were given for dismissing the appeals although the legislation required that the decision of the committee on an appeal and the

Settlement

3. The school's governors accepted that there were faults in the appeal committee's procedures. They agreed to offer each of the parents another hearing by a new appeal committee and that the governors would accept the outcome of that hearing. The arrangements agreed were that:
 - the new committee would comprise people who did not serve on the original committee;
 - the new committee would be served by an appropriately trained or experienced clerk, to be provided by the relevant diocesan schools commission;
 - the factual case for the school would be based on the contemporary situation; and
 - the parents' case could refer to their present situation and accordingly might differ from the case they made to the original committee.
4. The Ombudsman was satisfied that this was an appropriate settlement of the complaints.

(Local settlement 96/B/1492 etc)

A4: Admissions

Adequate information should be sent to appellants in advance – importance of training for appeal committee members

1. Mr X complained that a council failed to deal properly with his appeal against its refusal to offer his son a place at the selective school of his preference.

Faults

2. The Ombudsman's investigation established that there were a number of faults in the appeal arrangements. First, the information sent to appellants about the role of the appeal committee was inadequate. If Mr X had known in advance what he was told by the council a month later about the way the committee worked, he would have framed his presentation to the committee in a different way.
3. Secondly, the way in which the appeal committee considered the question of whether prejudice to efficient education or efficient use of resources would be caused by an additional admission was inadequate. The committee members took the view that prejudice always arose when the published admission number was exceeded.
4. Thirdly, the appeal committee's consideration of whether the case made by the parent outweighed the prejudice was flawed. Committee members took account of irrelevant considerations such as the relative qualities of selective schools in the area; and also took into account their personal views and previous experiences rather than making a decision based on what they actually heard or read as evidence.
5. Fourthly, the information sent to appellants about the extent to which members of appeal committees who

came within the category of 'persons interested in education' had a connection with the council was misleading. The council's notes for parents about admission appeals stated that such members had no connections with the council. In fact in this particular case, the member in that category was a member of the council.

Settlement

6. The council agreed to take the following action to settle the complaint:
 - pay £650 compensation to Mr X;
 - review the information sent to appellants about the remit of appeal committees and the criteria they used in determining appeals involving selective schools;
 - review the guidance provided to appeal committees on the question of prejudice to efficient education or the efficient use of resources;
 - ensure that all appeal committee members were adequately trained so that they were able to establish whether a case for prejudice had been made; and how to assess relevant evidence and separate it from other, irrelevant, factors; and
 - review the information sent to appellants about the extent to which 'persons interested in education' have a connection with the council.

(Local settlement 96/C/2227)

A5: Admissions

Where distance is a critical factor in admission decisions correct information should be used and made clear to parents

1. Mr and Mrs Newton complained about the way a council dealt with their application for a secondary school place for their son and with the appeal against the council's decision to refuse a place at their preferred school.
2. Their son started his secondary education at an alternative school. He became unhappy and told his parents that he was being bullied. The situation did not improve after Mr and Mrs Newton had been in contact with the school so they applied for a transfer for their son at the end of the first year in secondary school to the school they had originally requested. That application was declined and their appeal was not upheld.
5. Subsequently Mr and Mrs Newton found out that the route which the council had measured was not the route that children from the area traditionally used, which was a woodland walk. By that route their preferred school was their nearest co-educational school. The council's leisure department had erected gates and fencing to mark out the route. It had also produced a leaflet, in a series called *Woodland Walks*, mapping the route. The head of the school considered that this route was not only shorter than the council's route but was preferable because it had traffic lights on the busy main road which children had to cross and was also safer because of the gates and fencing.

Proximity

3. The council's arrangements were that admission to each secondary school was guaranteed for children living within the catchment area. Any places still available would be allocated to children who had older siblings at the school and to children living in the catchment area of a single sex school whose parents were applying to a co-educational school which was the nearest to their home, measured by the shortest available walking route.
4. Mr and Mrs Newton believed that their preferred school was their closest co-educational school. However, the council told them this was not the case. At the appeal hearing there was a map available which indicated the address of the appellants and the position of relevant schools. But the exact route used by the council to measure the route to each school was not indicated on the map.
6. Mr and Mrs Newton's son was out of school for a term before joining a new school where he settled well. But Mr and Mrs Newton said that the need to transport him to and from school placed a considerable strain on the family.

The Ombudsman's view

7. The Ombudsman recognised that proximity to a school was a crucial factor in the council's criteria for allocating places. He said that was all the more reason for the council to select appropriate routes, measure them correctly and clearly identify to parents the routes that had been used. The council did not measure the shortest route from the Newtons' house to the school because it was not on the map used by the education department as a marked footpath. However, it appeared in a publication about woodland walks published by the council's leisure services department and it was the route used

by children walking from their area to the school. The Ombudsman considered that the council's failure to identify a route used by so many children was maladministration. He said:

"I recognise the work necessary to produce sufficient maps so that appeal panel members and parents can assess the routes used to the various schools but, where the distance to a school is such a critical element in the allocation of places, I consider that it is maladministration not to make maps available at an early stage of the admissions procedure so that parents can raise any questions about routes used. I would also recommend that the council checks with schools to ensure that it is measuring routes recognised by the various schools in its area."

8. The Ombudsman said the failure to have a map detailing the route available at the appeal hearing was maladministration.

Injustice

9. The evidence showed that if the council had measured the shortest available route to the school being used by pupils from Mr and Mrs Newton's area in the first place, their son would have been allocated a place in their first choice school. Had this happened, Mr and Mrs Newton would not have had the considerable anxiety they experienced and been put to significant time and trouble. The Ombudsman recommended that the council should pay them £1,000.

(Report 96/B/1544)

A6: Exclusion

Delay in arranging education for excluded child – no effective co-ordination between different sections of a department

1. Ms X complained about the extensive period when her son Y received no education, and about the council's offer of compensation.

What happened

2. Y was permanently excluded from his primary school when he was aged seven. He received no education at all

for some 14 months. Some interim provision was then provided but Ms X considered this unsatisfactory. He resumed full time education four terms after his exclusion from the primary school.

3. Ms X considered that the effect on Y was particularly severe because he had special educational needs. Following the exclusion, the council began a

statutory assessment but there were delays in that process. The final statement was issued more than a year after the beginning of the assessment (Y started at his new school a year after the beginning of the assessment).

4. At the time of Y's exclusion, the council had a pupil referral unit for secondary pupils. But in view of the very small number of primary school pupils who were excluded, the council did not have a pupil referral unit for them. The council's intention was that support for primary aged pupils out of school would be given by the primary support team. However, that team offered no support to Y as the team was giving priority to pupils with statements of special educational needs.
5. Ms X made a number of approaches to the council asking for an interim school placement or interim provision. Several sections in the education department had responsibilities which were relevant to Y's situation but co-ordination between them was not effective and there was no one section which took a lead role to ensure that excluded pupils received education.

Outcome

6. The council accepted that the delay in making arrangements for Y's education was unacceptable. It offered compensation which Ms X thought was wholly unsatisfactory. She wanted to buy a computer and other educational materials which Y could use at home in order to redress the deterioration in his progress which had resulted from the loss of education.
7. The Ombudsman considered that in assessing a suitable remedy it was appropriate to have regard to the value of the education which Y had lost and he took into account that the cost to the council of a primary school child in its area at the time was some £1,920 per year. In this case the period involved was over a year and the Ombudsman proposed, and the council accepted, that compensation of £2,000 would be appropriate.

(Local settlement 96/A/3741)

A7: School milk

Inadequate information for committee – insufficient notice for members – breach of legislative requirement

1. Mrs Turner complained, on behalf of a parents' group, that a council decided to stop providing milk in schools to children up to the age of seven on the basis of inaccurate and inadequate information and consultation. As a result, milk was no longer provided for their children.

several ways, in particular because the cost of the milk was presented as being higher than it actually was. Moreover, the council had not considered whether to increase the charge to parents by raising their contribution towards the cost of the milk or the administration charge.
2. Mrs Turner also complained that the council had failed to claim a subsidy from the welfare food scheme, administered on behalf of the Department of Health, which would have enabled it to obtain cost-free milk for under fives, and that the council was unreasonably failing to provide free milk to children under five in its schools.
6. Mrs Turner also said that the council had not given consideration to requiring parents on income support to make some payment for school milk provision as a way of reducing its costs. Although local authorities were under a duty to provide a free meal and drink at lunchtimes for children where a parent was on income support, Mrs Turner said that this obligation did not extend to mid-morning milk.

What happened

3. Until March 1995 the council provided milk in its primary schools for children up to the age of seven. The milk was taken during the mid-morning break. Parents were charged £2.50 per term, except for those parents who received income support, who were not charged anything. No claim was made by the council for the subsidy available from the welfare food scheme for milk for children under the age of five, and officers seemed unclear about that subsidy scheme.
4. As part of the consideration of budgetary reductions for 1995/96, the council's education committee decided to stop the school milk provision.
5. Mrs Turner complained that the council had not allowed time for consultation with parents before this decision was made. She also said that the information presented to the education committee was flawed in

7. Following the council's decision to stop school milk provision, Mrs Turner and other parents organised themselves into a pressure group with the aim of persuading the council to reverse the decision. They carried out a survey of the views of some 18,000 parents and, following that, she and another member of the group began a non-profit making business supplying milk to schools. The business claimed the welfare food scheme subsidy and all nursery school children were supplied with free milk. Children of other parents paid 50p per week. The business supplied 52 schools.
8. Following representations from the pressure group, the education committee reconsidered the matter. However, it concluded that it should be left to individual schools to determine whether they wished to set up school milk schemes.

Information for committee

9. The Ombudsman found that the information presented to the education committee, both initially and subsequently when there was reconsideration, was inaccurate and in addition important information was omitted. The Ombudsman agreed, following consultation with the Department for Education and Employment, that Mrs Turner was correct in her contention that all parents of children over five years of age should be charged. The failure to charge parents in receipt of income support for milk provided at mid-morning appeared to be in breach of the relevant legislation.

Timing

10. Mrs Turner said it was unreasonable that the first time parents became aware of the intention to discontinue school milk was five days before the meeting of the education committee. If parents had been made aware of the proposal earlier they could, and probably would, have made representations and put forward suggestions as to how the provision could be retained. The council argued that it had an obligation to carry out the statutory consultation required in relation to the budget but was not required to carry out any further consultation. It said there was a period

of five weeks between the education committee and the meeting of the council when the final decision was taken so that there was adequate opportunity for representations to be made in that time.

11. The Ombudsman did not criticise the council for not consulting parents about the proposal before the education committee meeting. However, the Ombudsman considered that in view of the importance of the proposal to stop school milk provision, the committee members had not received sufficient notice of the proposal.

Outcome

12. The council agreed to reconsider the original proposal and also to consider the additional option of providing free milk for children aged under five only. The council gave an assurance that the report to the education committee would include a detailed analysis of relevant issues and costings and that the parents' group's views would be provided to the committee before it took a decision. The council also agreed to pay Mrs Turner £250 for her time and trouble in pursuing the complaint. The Ombudsman considered that the implementation of these proposals would provide a satisfactory remedy.

(Report 95/C/1743 etc)

A8: School repairs

Need for adequate system and monitoring – need for good communication with parents and schools

1. Two parents complained that a council failed to take action to ensure that the schools which their children attended were in a reasonable state of repair.

They said that their children's safety had been put at risk and their education adversely affected.

Repairs systems

2. There were three major items of disrepair which in particular formed the basis of the complaint. These were repairs to the kitchen and dining room floors, the roof and windows throughout both the schools concerned and the toilets in one of the schools.
3. The Ombudsman expressed concern about the administration by the council of repairs to schools. During the course of the investigation the Ombudsman found that it was not possible to trace accurately the progress of repairs from the date of their first being reported to the date of completion. Communication between the schools, the clerk of works and the council's direct labour force was not recorded consistently. Much appeared to depend on word of mouth. The Ombudsman said:

"The council should have in place a proper and clear system for recording requests for repairs, prioritising and programming these, and for monitoring the progress of work."

Communication

4. The Ombudsman also expressed concern about communication. The time taken by the council to complete the work on the dining room floor was considerable and the understandable frustration of parents was compounded by the absence of any information from the council about the nature of the problems involved or the likely time when the dining room might be ready for use. She did not believe that the council kept either the schools or parents properly informed about the condition of the floor or about progress with the work. That was maladministration.
5. The Ombudsman was pleased to learn that the council had now introduced an arrangement for letters to be sent

to all schools with a clear explanation of the financial position insofar as it affected the repair and maintenance of schools, on a regular basis. She said that head teachers should be advised to share information with their governing bodies. This would enable head teachers and governing bodies to plan their expenditure, some of which, for example redecoration, was dependent upon major work being completed by the council. She commented that the frustrations of teachers and parents might well be alleviated if they knew that the needs of their schools had been recognised by the council and that they were on a waiting list for completion.

Outcome

6. The Ombudsman did not think that injustice was caused to either parents or pupils beyond their understandable frustration. She was satisfied that a number of repairs had been completed within the two schools and said that it would not be right to conclude that the council had generally failed to respond to the needs of the schools. She accepted that the council was constrained by the limited finance available and had an enormous problem because of the general condition of school premises in the area.
7. Nevertheless, the Ombudsman said it was clearly unacceptable that children should have to learn in conditions such as were found in this investigation. Children were using the school hall alongside buckets and trays collecting water leaking through the roof. The head teacher said that on occasions the hall could not be used because of the volume of water on the floor. The Ombudsman said:

"I look to the council to improve its systems, establish proper priorities and communicate appropriately with schools and parents."

(Report 95/C/2680 etc)

A9: Special educational needs

The importance of early planning for the transfer from primary to secondary education of children with statutory statements

1. Ms Mount's son Jim had a statement of special educational needs. He attended a special school outside the borough. Ms Mount complained that there was fault in the way the council dealt with her son's needs in that it failed to:
 - make appropriate and timely arrangements for his transfer from primary to secondary education; and
 - give adequate consideration to arrangements for the first year of his education at secondary level.

The council's arrangements

2. At the material time, the council relied on schools to undertake annual reviews of statements and to inform it of any children needing to transfer. Schools were expected to have a review as early as possible in year 6 (that is the final year before transfer) but this was not monitored by the council and there was no system in place to ensure that it happened. The council did not compile a complete list of children who had statements and were due to transfer to secondary education; the arrangements it had to make sure that the necessary steps leading up to transfer were taken at an appropriate time applied only to children in its own schools, and did not cover children at schools outside the borough.
3. The Ombudsman concluded that:

"At the material time, the council had no adequate system for ensuring that proper arrangements were made for the transfer of children with statements who were attending schools outside the borough."
4. Ms Mount alerted the council in November 1993 that Jim would be leaving his primary school the

following July. She also met a council officer in February 1994. The Ombudsman concluded that the council was aware of the need for Jim to transfer in sufficient time to begin making arrangements, but that it did not do so in a timely and efficient way.

School preference

5. Ms Mount told the council's officer in February 1994 that she would like Jim to transfer to a special school outside the borough to which pupils from his primary school commonly transferred. The primary school reviewed Jim's statement in May and recommended that he should transfer to the school Ms Mount preferred. Their report was received by the council on 20 June. On 11 July the head teacher of the preferred secondary school wrote to Ms Mount to offer Jim a place. She told the council this. Jim spent a day at the school to familiarise himself; he was very pleased that he would be going to the same school as his friends; and in August Ms Mount bought the uniform for the school.
6. But on 23 August the council wrote to Ms Mount to say that it would not agree to Jim's transfer to the secondary school outside the borough, and on 30 August offered Ms Mount a place at a school within the borough. Term began on 7 September.
7. By this time it was too late for Ms Mount to pursue an appeal and have the disagreement about the school placement resolved in time for the start of term. In any event, at that stage she did not have a right of appeal, because the right could only arise when the council amended the statutory statement to name the school in the borough or used an alternative

statutory procedure to decline to substitute the name of the parent's preferred school in the statement.

A conflict of views

8. Because Ms Mount was not satisfied with the offer of the school within the borough, she did not send Jim there. She gave up work and taught him at home as best she could.
9. The council issued an amended statement in January 1995 and Ms Mount appealed. Before the appeal was heard, the council agreed to fund the place at her preferred school and made the arrangements, but by this time it was June and Jim had missed some two-and-a-half terms of school.
10. The Ombudsman said that on the one hand, parents have a legal responsibility to ensure that their children receive suitable education, and the council had offered Jim a place at one of its schools with effect from 7 September. On the other hand, at the start of the September term Ms Mount was in a difficult position: she had been offered a place at the school that she wanted, and she knew that Jim wanted to go there with his friends. She considered – for a number of reasons – that the school offered by the council would be unsuitable. The Ombudsman said it was her decision not to send Jim to that school, but he could understand why she reached that decision.
11. The Ombudsman said he could also understand the council's reasoning. It considered that its school could meet Jim's needs and that was a view it was entitled to form. The comparative cost of attendance (including transport cost) at the two schools was a material consideration. A place was available for Jim throughout the time Ms Mount kept him at home, and so it saw no case to provide home tuition.

12. The Ombudsman said:

"A statutory right of appeal was provided so that disputes of the kind at the heart of this complaint could be resolved. In the normal course of events it would have been quite reasonable for the council to expect that Ms Mount should go through that process. But, because of the council's maladministration, the circumstances were not normal. Because of the council's delay an appeal could not be decided until well after Jim was due to start at secondary school. I am not satisfied that the council addressed itself to this point or that it properly considered what would be in Jim's best interests in the particular circumstances of his case. There is no evidence, for example, that the council properly considered departing from its normal policy on the provision of home tuition. Nor is there any evidence that it considered – in consultation with Ms Mount and her solicitor – cutting through the process by revising Jim's statement so as to allow Ms Mount to appeal at the earliest possible moment."

Failure to seek a resolution

13. The council could have explored a compromise arrangement at an early stage, for example by proposing that Jim should attend the school outside the borough on the understanding that Ms Mount would meet the cost of transport. Ms Mount said that she herself suggested that early in the autumn term. The council's officers did not recall that and there was no written record so that there was a conflict of evidence on that particular point which the Ombudsman could not resolve. But the Ombudsman accepted that it was likely that if the council itself had proposed such an arrangement, Ms Mount would have accepted it. If so, Jim would then have been in school reasonably early in the autumn term. The Ombudsman commented:

"In short, I find that the council did not seek to resolve the dispute with the urgency and flexibility that was required because of its own, earlier mistakes. This was maladministration."

Outcomes

14. On the question of injustice as a consequence of the maladministration, the Ombudsman said:

"Ms Mount and Jim were caused prolonged distress and uncertainty; Ms Mount was deprived of the right of appeal at the appropriate time; and she has had to devote significant time and trouble to pursuing matters with the council and with me. Jim did not receive the provision to which he was entitled for two-and-a-half terms: that was, in part, the responsibility of Ms Mount but the council must accept its share of the responsibility for Jim's loss of educational opportunity."

15. Taking all these factors into consideration, the Ombudsman recommended that the council should pay compensation to Ms Mount of £1,500.

16. Since the events concerned, the council has significantly improved its procedures. The council now uses computer records and other information to draw up a list of all children with statements and who are due to transfer from primary to secondary school. A senior officer attends the review meeting for each child in the summer term of year 5 (that is four terms before transfer is due). This is to identify those children needing to change schools at the 11 plus stage and any complex needs. In the autumn term the council makes a preliminary assessment and consults schools, so that a review meeting later that term can look at firm proposals and discuss the position with parents. Progress is then monitored.

(Report 96/A/679)

A10: Special educational needs

Integration into mainstream school – focus on disciplinary action against the head and overlooking the responsibility to ensure the child's special educational needs were met

1. Mr and Mrs X had a son, Y, who had cerebral palsy. He had a statement of his special educational needs and attended a special school until he was ten. The council then placed him in a mainstream primary school.
2. The council devoted a great deal of time and thought to ensuring that it understood Y's abilities and needs, and advising the school accordingly. The Ombudsman particularly commended the high standard of the council's arrangements for Y's gradual integration into the school.
3. The Ombudsman said that in every school it was the responsibility of the head teacher to ensure that, on a day-to-day basis, children with special educational needs received the educational provision prescribed in their statements, and that school staff delivered the provision satisfactorily.

A competent head teacher would identify any problems swiftly, determine whether these could be resolved by the school and, if not, refer them promptly to the appropriate officer of the council. Problems arose with Y, but the head teacher did not always resolve them satisfactorily or refer them to the council. The council had many concerns about the head teacher's competence and took disciplinary action.

4. The council was aware of the concerns of Mr and Mrs X about the school's management of Y's provision, following their meeting with the council's special educational needs adviser, subsequent letters, and their complaint, (which the Ombudsman said was not properly examined). The council had serious concerns about the head teacher's competence and knew that Mr and Mrs X were deeply worried about the effect on Y. But the council's focus appeared to be solely on its disciplinary proceedings against the head teacher and not on its responsibility to ensure that Y's special educational needs were properly met.
5. Y's statement prescribed that the full breadth of the national curriculum should be delivered and that there should be full time integration assistant support. In view of this and the council's commitment to the integration of children with special educational needs into mainstream schools, and the importance attached by the council to equal opportunities, Mr and Mrs X were entitled to expect that the council would ensure that Y could participate in all activities at the school. But he was excluded from swimming and from a school trip. The Ombudsman said that it was ultimately the council's responsibility to ensure that equal opportunities were provided and the integration assistant (or appropriate cover for her) was available to enable Y to participate in all activities.
6. There was injustice to Y because of his exclusion from some school activities, and to Mr and Mrs X because they were anxious about him and had difficulty pursuing their concerns effectively. The council agreed to pay £500 compensation.

(Local settlement 96/B/829)

A11: Special educational needs

Failure of communication leading to breach of statutory duty

1. Mrs X was the mother of an autistic child who had a statement of special educational needs. The child attended a grant-maintained school for children with emotional and behavioural difficulties. Mrs X complained that there was unreasonable delay by the council in implementing decisions made by the council's special educational needs panel to increase the provision of one-to-one teaching support for her daughter.
2. The panel agreed an increase in adult support to help manage the child's aggressive behaviour, and to maximise her opportunities for learning. The increase was from level F to level G on

the council's resource ladder. This decision was made in June 1996 and the statement was amended accordingly in August 1996.

3. The council's intention was that the enhanced level of provision should be in place for the start of the autumn term in September 1996. However, the head of the school did not receive a copy of the amended statement, or notification of the change in provision, until late November. It was not then possible to make additional provision until the start of the spring term in January 1997.
4. The council agreed that there was a breakdown in communication between the council and the school. Although the team leader for pupil statements
5. The council was in breach of its statutory duty to arrange the provision identified in the statement for the whole of the autumn term. The council agreed to pay Mrs X £1,225, to be used for her daughter's educational benefit. This was the difference between level F and level G funding for one term.

(Local settlement 96/A/582)

A12: Student grants

The need for adequate advice to enable students to make informed choices – eligibility for grant during placement as part of sandwich course – responsibility for information about financial support rests with the council

1. Mrs Hunter complained that a council did not give her adequate advice when agreeing to award her a maintenance grant for a university four year sandwich course. The council did not tell her that her choice of placement for the year away from the university would affect her entitlement to the grant during that year.

What happened

2. Mrs Hunter was a mature student and the course she wished to attend was for a degree in public relations. The council approved her application for a maintenance grant and said that this would be for the four year period of the course, subject to national regulations and regulations issued by the council. There was, however, nothing which might have alerted her to the fact that her grant might cease if she took an unpaid work placement during her sandwich year.
3. Mrs Hunter was unsuccessful in finding a paid work placement for her year out, but she secured an unpaid placement with a publicity organisation which worked for Government departments or publicly funded organisations. The placement was approved by a tutor at the university as being academically suitable, but the tutor gave no advice about the availability of grant.

4. Mrs Hunter did not at this stage seek advice from the council on whether a grant would be available for the year out. She said that she had no reason to doubt that she would get a grant for that year, since the council had agreed to provide grant funding for four years. As the council had not enquired about her placement plans or drawn attention to the importance of her choice, she believed it was reasonable to assume that the choice of placement was irrelevant as far as grant funding was concerned.
5. However, when Mrs Hunter telephoned the council to discuss the renewal of her grant for the placement year, the council made enquiries of the university and of the Department for Education and Employment. The Department said that the placement did not fall within the regulations as being eligible for a maintenance grant. The council told Mrs Hunter about this on 4 September (ie just as the placement year was beginning). Mrs Hunter had already commenced the placement and did not wish to inconvenience the employing organisation and destroy any opportunity to develop professional credibility with a potential future employer.
6. The Ombudsman said that the question she had to decide was whether the advice and information issued to Mrs Hunter gave her enough information at least to alert her to the possibility that an unpaid placement might not qualify her for a grant. The Ombudsman said:

“The regulations are not so simple that I can reasonably expect a student, who is unlikely to have any knowledge of the rules or experience of how they are applied, to obtain them and deduce whether or not he or she is eligible for a grant.”
7. There were two documents which constituted the published advice to students, and they were issued to Mrs Hunter two years before the question of funding for her placement became relevant. The council's guidance included nothing about sandwich courses. A guidance document issued by the Government did not contain any clear warnings and could incline a reasonably optimistic student to expect a grant to be paid for the whole of the sandwich course. In any event, the Government's guidance referred the reader back to the local education authority.
8. The form which Mrs Hunter received said that the grant was for the full period of the course. Although it referred to the regulations it did not quote from them or draw attention to particular matters which might restrict a student's eligibility. No other advice was forthcoming, despite the fact that Mrs Hunter made it clear in her application that the course included the option of a sandwich year.
9. The Ombudsman said that the council should have given Mrs Hunter advice specific to the sandwich year. The advice and information given to her was not adequate, and that was maladministration.

Adequacy of advice

6. The Ombudsman said that the question she had to decide was whether the advice and information issued to Mrs Hunter gave her enough information at least to alert her to the possibility that an unpaid placement might not qualify her for a grant. The Ombudsman said:

“The regulations are not so simple that I can reasonably expect a student, who is unlikely to have any knowledge of the rules or experience of how they are applied, to obtain them and deduce whether or not he or she is eligible for a grant.”

The role of the university

10. The council said that it expected university placement officers to check with it that a grant would be available, if there was any doubt, before approving any placement. The Ombudsman considered whether the council was right to expect universities and colleges to fill the gap in the council's advice by providing their own advice and information. The Ombudsman recognised that it might in practice be the case that many such institutions had staff in post who were both familiar with the regulations and

made a point of advising students about their eligibility. However, she said, it was the council's duty to administer these public funds, not that of the university or college. The primary role of the tutors was to ensure that a proposed placement met the academic requirements of the course. Financial support, where necessary, was a matter for the student and the local education authority.

11. The Ombudsman therefore concluded that the council was wrong to rely on the university to provide Mrs Hunter with the necessary advice. The Ombudsman was pleased to note that since that time the council had improved its guidance, which now included advice that maintenance payments were not normally available to students undertaking sandwich placements; and that there were exceptions set out in the regulations and students should seek advice.

a grant. She might not have accepted an unpaid placement if she had known it was ineligible or she might have been able to budget differently. She might have forgone the sandwich year altogether. The Ombudsman could not say with certainty which of these options would have been pursued and recognised that Mrs Hunter might always have found it necessary to make some financial contribution herself. She had the valuable experience obtained from the placement but nevertheless she had suffered some financial hardship during the year which might have been avoided or alleviated had she known the correct position at the proper time.

13. The Ombudsman recommended that the council should pay Mrs Hunter half the amount which she would have received if she had obtained an unpaid placement with eligibility for a grant.

Injustice

12. The Ombudsman considered whether injustice was caused by the maladministration. Mrs Hunter did not realistically have the option of cancelling the placement year by the time she found out she would not have

(Report 96/C/3702)

A13: Student grants

Publication of misleading information – small mistake leading to significant consequences

1. Miss Brook complained that a council published incorrect information about student grants for the 1996/97 academic year as it wrongly described when a student could be classed as independent of his or her parents and thus be eligible for a larger grant. She said that as a result she had postponed her application for a one year post graduate course of teacher training for a year, and then suffered disappointment and frustration when she learnt the true situation, and felt that she had wasted a year of her life.
2. Under the mandatory awards regulations an applicant had to meet one of four criteria in order to be classed as independent and one of these was that the applicant had attained the age of 25 before the beginning of the academic year, which was defined as 1 September for courses which began in the autumn term.
3. The council's guidance on grants for students referred to that criterion as the student needing to be 25 or over on 1 September and not, as it should have done, before that date.
4. On the basis of the council's information Miss Brook concluded that if she waited a further year before starting her course she would become eligible for a grant as an independent student as her 25th birthday would fall on 1 September 1997. She therefore postponed taking up her place on the course. The following April, when she asked the council for a form to apply for the independent student grant, the council pointed out that she would not be eligible.
5. The council promptly accepted that there was an error in its leaflet. Following Miss Brook's complaint to the Ombudsman, the council identified a way in which Miss Brook might be able to meet one of the other criteria for independent student status, and assisted her to establish that she satisfied that criterion. Miss Brook was thus able to receive a grant as an independent student and the Ombudsman regarded the council's action as a satisfactory settlement of the complaint.
6. The Ombudsman pointed out that the error in the council's leaflet was not great – a date was given which was only one day out – but the consequences for Miss Brook were considerable. Miss Brook deferred her teacher training course for a year in the expectation of a grant for which she was in fact one day too young to qualify on the criterion of age. The Ombudsman said that the complaint highlighted the importance which local authorities should pay to checking the accuracy of all written information (and particularly that about eligibility for financial assistance) which they provide for members of the public.

(Report 97/C/790)

A14: Transport

Parent misled by series of inconsistent explanations of policy – the need for proper records of decisions – the need for written instructions for staff and written information for parents before they express school preference

1. Mrs X complained about the way a council dealt with her requests for free transport for her two sons when they transferred to secondary school. She lived in the parish of 'Newbridge'.
to her when she was told that there was no connection between entitlement to free transport and a school's catchment area.

What happened

2. When Mrs X enquired about free transport for the first son to transfer, she was initially given the explanation that the council's policy was to provide transport assistance for students who were attending their nearest available school, provided it was not within the statutory walking distance; and free transport would not be available for her son as 'Forest' School was not the nearest available school. When she pointed out that there were students from her area travelling free on the coach notwithstanding that they were not attending their nearest school, she was given a further explanation. This was that an exception to policy was made some years previously on the closure of a local secondary school to provide transport for all students living in Newbridge. This exception, the council said, did not cover the 'Greenhill' area. Greenhill was Mrs X's postal address.
3. Mrs X took that explanation to mean that students in Newbridge would come within the exception to policy and would be entitled to free transport. She went to a great deal of trouble to produce proof, by reference to a number of authorities, that she lived in the parish of Newbridge. The council then said that the exception only applied to the part of Newbridge which was the same as the catchment area for Forest School. That was not correct, as was subsequently confirmed
4. The council then said that the area covered by the special exception was the area north of a camp site, and it was in effect explained that the camp site was the dividing line between those students who lived closer to Forest than to Mrs X's nearest school and those who didn't. That was an incorrect explanation of the comparative distances, as Mrs X pointed out.
5. There were subsequently some further explanations of how the special exception was defined. Altogether Mrs X was given six different definitions of transport entitlement. The Ombudsman said that he could quite see why Mrs X felt that the council was making up the rules as it went along. It was, he said, unsatisfactory that Mrs X was given so many conflicting explanations of the council's arrangements for free transport. If one of the explanations was correct then all the others were wrong. The council's statements to Mrs X were, to say the least, misleading and confusing.
6. The confusion was compounded because the council in error granted free transport to some children living south of the camp site. The council accepted that it had made a mistake but said that a mistake in departing from its arrangements in one case would not justify doing so in other cases. The Ombudsman accepted that the council's view on that point was not unreasonable. But he did understand how this error added to the sense of injustice felt by Mrs X.

Lack of written information

7. The Ombudsman found that there was no committee report or committee minute which referred to a special exception to the normal transport policy in Newbridge. Neither was there any mention of such an arrangement in the literature made available to parents or in the written instructions to staff about how to operate transport arrangements.
8. As there were no written instructions for staff, it was all too easy, the Ombudsman said, for confusion and misunderstanding to arise; and for different officers to have different perceptions of what the council's arrangements were. The Ombudsman said that it was vital that any council should:
 - formally decide exactly what its transport arrangements were;
 - describe the arrangements clearly and unambiguously;
 - set out the arrangements in written instructions for staff; and
 - explain the arrangements clearly and in writing to parents when they were deciding on their preferences for schools.
10. The Ombudsman also considered whether the actions of the council deprived Mrs X of an entitlement to free transport under the council's policy. Because there was no documentation, it was impossible for the Ombudsman to be sure of the answer to that question. On the one hand, Mrs X was told that the special arrangement covered Newbridge, and since at the time the council did not define the area more precisely than that, it was entirely reasonable that Mrs X took the council's statement to mean the parish of Newbridge. But on the other hand the council said after that, and continued to say, that the arrangement did not cover the parish of Newbridge but a more restricted area. The Ombudsman also took account of the fact that all the officers involved said that it was not their belief at the time that the special arrangement covered the part of the parish where she lived; and that on two occasions council members considered the position and did not take the view that free transport should be given.
11. Mrs X was misled. But the misleading related in substance only to her older son. By the time her younger son was due to start secondary school the council had clearly said that free transport arrangements did not extend to her address.

Effect on Mrs X

9. The Ombudsman had no doubt that the council's faults had an adverse effect on Mrs X. Because of the conflicting and misleading statements made to her, she had to devote a great deal of time and trouble, and some expense, to try to clarify the position and demonstrate that she met the various criteria for free transport which the council suggested. Furthermore she had a prolonged period of uncertainty and frustration.

Remedy

12. The Ombudsman did not think that it would be reasonable to expect that the remedy for the complaint should be that the council would grant free transport for the two boys. However, in view of the considerable difficulties caused to Mrs X and the uncertainties, the Ombudsman did think it right that the council should make a significant contribution to her financial outlay. The council accepted that this would be fair and reasonable in all the circumstances and agreed to make a payment of £1,000.

(Local settlement 96/A/1697)