

Section A: Education

A1: Accessibility of buildings

Pupil with mobility problems – difficulties about move from lower school to upper school – failure to plan ahead

1. Mr Wood complained about the actions of a council at the time when his daughter Lucy was due to move from the lower school to the upper school of the secondary school which she attended.

What happened

2. Lucy had problems with her mobility and needed to use a wheelchair to move more than very short distances. She began her secondary education in a school in whose catchment area the family lived. The school comprised lower school and upper school units on a large site. The site was on a hill and both the lower and upper school buildings were on several levels. In order for Lucy to be able to move about inside the school and around the site the council carried out some adaptations to the lower school buildings and also bought for her use a specialised wheelchair which could climb and descend stairs.
3. In Lucy's last term at the lower school, the council held a review meeting at which Mrs Wood was told that the council did not have funds to carry out the adaptations necessary to make the upper school accessible to Lucy. It was suggested that the family should look at the options open to them, including the possibility of transferring Lucy to another school, which was some five miles from the family's home.

The situation at the upper school

4. The Ombudsman recognised that the council's decision that it should not carry out adaptations at the upper school was the result not only of lack of funds, but also of a report from the fire officer about the risks which the

use of Lucy's specialised wheelchair in the upper school buildings would cause both for her and for other pupils. The Ombudsman did not consider that the council could be criticised for not carrying out those works which would have resulted in a situation of possible risk to other pupils and staff as well as Lucy. The fire officer advised that Lucy should use rooms only on the ground floor. The head investigated this possibility but found that only something like half the national curriculum could be available for her in that way.

Timing

5. Mr Wood was aggrieved that the council did not tell him before Lucy started at the lower school that she would not be able to transfer to the upper school two years later. If the family had been aware of the problem they could have asked for a place for Lucy at the alternative school at the outset so that her secondary school career would not have been interrupted.
6. The reason the council did not inform the family about the problem initially was that the council itself did not know there was going to be a problem. The Ombudsman identified three reasons for that:
 - the demonstration of the specialised wheelchair before Lucy joined the school was confined to a trial in the lower school only. If a more comprehensive test had been carried out involving all the buildings, the problem would have been apparent at the beginning; and
 - the council made no attempt before Lucy began her education at the

school to identify and cost any of the works which would be required for her to have full access to the upper school buildings. If such an exercise had been undertaken it would have been clear that these works would be extensive and very much more expensive than the officers believed; and

- the council failed to ask the fire officer to consider the implications of Lucy using the specialised wheelchair in either the upper or lower school buildings before she started at the school.
7. The council was also at fault for not carrying out its customary annual review at the beginning of Lucy's final year in the lower school. If such a review had been carried out at the proper time it was likely that the council could have been in a position at least to tell the family several months earlier that alternative arrangements would need to be considered.

Outcome

8. When the problems were discovered Mr and Mrs Wood agreed to send Lucy on a six-week trial placement to the alternative school. By the end of the trial placement Lucy had settled at that school and continued with her education there.
9. As a result of the council's failures Mr and Mrs Wood had sent Lucy to the secondary school with no awareness that her education there would be cut short and that she would have to change schools two years later. When that fact became apparent to them, it caused the family particular distress, anxiety and upheaval which, in the Ombudsman's view, the council could and should have avoided. In recognition the council agreed to make a compensatory payment of £1,000.

(Report 97/C/164)

A2: Admissions

Appellant's partner known to appeal committee member – two stage procedure – consideration of catholicity

1. Mrs Sewell complained about the way in which the appeal committee of a grant-maintained secondary school considered her appeal for a place for her daughter.

Conduct of the hearing

2. The Ombudsman was satisfied that Mrs Sewell was given sufficient information about the way in which the hearing would be conducted; and that the committee provided adequate

opportunities for questions to be asked and representations to be made.

Appeal committee member

3. The appeal committee member who took the chair realised that he knew Mrs Sewell's partner in connection with the latter's job. At the hearing he pointed this out and offered to vacate the chair. The Ombudsman considered that the chair acted properly in announcing that he knew Mrs Sewell's

partner. His connection with her partner was, in the Ombudsman's opinion, so remote that it was not improper for the chair to take part in hearing and deciding the appeal. Neither Mrs Sewell nor her partner nor their friend who assisted them at the hearing had raised any objection. The Ombudsman made no criticism of this aspect of the way the appeal was handled.

Two stage procedure

4. In accordance with case law and the *Code of practice*, appeal committees should first decide whether there would be prejudice to the provision of efficient education or the efficient use of resources if one or more children were admitted, before going on to a second or balancing stage at which the case made by the parents is weighed against the prejudice.

5. The Ombudsman said about the first stage:

"I recognise the difficulties appeal committee members may have in reaching a decision about this. It is not sufficient, however, for them merely to accept the school's case; they must satisfy themselves whether the school's case has been demonstrated. In this case, the clerk's notes of the proceedings do not record what discussion there was of the question or what decision was reached. Clearly, the absence of a record of such a crucial decision amounts to maladministration."

6. However, from the oral evidence of the chair and the clerk, the Ombudsman concluded that the committee had in fact decided that prejudice would arise if more than 120 girls were admitted.

Catholicity

7. The school was a Roman Catholic school. The published admissions policy made it clear that one or both parents had to be committed members of the Catholic

Church. Mrs Sewell was a catholic. She had been separated from her husband for many years. She had two children, including the daughter concerned in the appeal, from her relationship with her present partner. The partner was not a catholic but the children had been brought up as catholics.

8. Mrs Sewell considered that the committee in its questions focussed unduly on the question of her marital status. But the Ombudsman recognised that the committee was obliged to have regard to the published admissions policy for the school (though not to be bound by it). The Ombudsman said:

"It seems to me, therefore, that the issue of catholicity was an important question for the committee to probe so long as it was not the only consideration the committee took into account."

9. On the basis of the clerk's notes of the hearing and evidence given by members of the committee, the Ombudsman was satisfied that Mrs Sewell's marital status was not the only relevant matter that the committee took into account in deciding not to uphold her appeal.

10. The Ombudsman was concerned that in a letter the clerk told Mrs Sewell that the committee was bound by the school's admissions policy. That was an error which would have added to Mrs Sewell's frustration and dissatisfaction, but the Ombudsman was satisfied that the appeal committee members understood the correct position.

Conclusion

11. The Ombudsman concluded that injustice was not caused by the way in which the hearing was conducted and the decision on the appeal was reached.

(Report 97/A/128)

A3: Admissions

Documents should be circulated in advance of an appeal hearing – two stage procedure – factors to be taken into account – references from clergy

1. Mr and Mrs X complained about the conduct of an appeal in respect of their application for a place for their son in a grant-maintained Church of England secondary school.

The admissions authority's case

2. Their first particular point of complaint was that they were not sent a statement summarising the application of the school's admissions policy to their case and the reasons for the decision refusing a place for their son. It appeared that the governors did not provide the clerk with any such statement. The Ombudsman found that this point in the complaint was soundly based because the clear advice in the *Code of practice* was not followed and the particular advice was significant as a matter of fairness for appellants.

Two stage procedure

3. It appeared that the appeal committee did not undertake the two stage procedure (ie at the first stage deciding as a matter of fact whether prejudice to efficient education or the efficient use of resources would arise through an additional admission, and then at the second or balancing stage, deciding whether the case made by parents outweighed the prejudice). The record of the appeal committee's decision did not refer to the two stage process and neither was it referred to in the decision letter to Mr and Mrs X.

Factors to be taken into account

4. The appeal committee appeared to misunderstand its role in an important respect. The committee appeared to make its judgements solely on the basis

of the school's admissions criteria. This was reflected in the decision letter to Mr and Mrs X declining the appeal when reference was made to the evidence submitted not fulfilling the criteria the school had to follow. This was misconceived. The *Code of practice* made it clear that an appeal committee had to take into account not only the school's admission arrangements but also the case put forward by the parent

The admissions criteria

5. At the appeal hearing the governors' presenting officer explained that places at the school had been allocated only by reference to the first two criteria in priority order, and that because of the heavy over-subscription of places at the school, the remaining criteria did not come into operation. The first criterion was about siblings. The second referred to church attendance by a child. Church attendance by the family was referred to under criterion three.
6. Yet the appeal committee was told by the presenting officer that the second criterion was based on the church attendance of the child and parent. Mr and Mrs X felt they were disadvantaged because they felt their son met criterion two and they considered that reference to their own church attendance would only have been relevant if criterion three had come into play. It was a disadvantage to them that the appeal committee considered the second criterion on the basis of church attendance of both the child and the parents.

References from clergy

7. The reference forms completed by clergy were put before the appeal committee. Copies were not made available to parents.

8. This was a contravention of the *Code of practice* which emphasised the need for fairness and stated that appellants should be given an opportunity to comment on relevant information obtained from the governing body which was put to the appeal committee. As the completed clergy references were put to the committee, copies should have been made available to appellants so that they had the opportunity to comment. The *Code* made it clear that those copies should be circulated to parents in advance.

Outcome

9. Following their unsuccessful appeal, Mr and Mrs X obtained a place for their son at a different school and were satisfied with that arrangement. Subsequently some places did become available at the Church of England school and Mr and Mrs X were approached to ask if they would still like a place, but by that time they did not.

10. So no remedy was required by, for example, a fresh appeal. But the Ombudsman thought that a review of the appeal committee arrangements for the future was necessary. The clerk

to the governing body agreed to arrange for the governors to consider a number of suggestions of matters to be reviewed, which included:

- consideration of what steps might be helpful by way of training related to the *Code of practice*, or briefing about the *Code*, for members of appeal committees and other participants;
- advice to future appeal committees that they should be guided by the *Code of practice*, in particular to undertake the two stage procedure, and to take into account both the published admission arrangements and the cases made by parents; and
- advice to the clerk to the appeal committee to ensure that a statement of the governors' case for refusing admission was circulated in advance to appellants; and that any document put to the appeal committee by one party to the appeal should be copied to the other party and circulated in advance.

11. The Ombudsman considered this a satisfactory outcome.

(Local settlement 98/A/107)

A4: Admissions

Code of practice – two stage procedure – factors to be taken into account

1. Ms A complained about the way appeals were considered in respect of her applications for places for her children in a grant-maintained infants school.

2. There were two appeals. The first was in respect of her daughter B, and the second was in respect of her subsequent application for her son C. A number of faults were identified.

Statement of the admissions authority's case

3. The clerk of the appeal committee did not send Ms A a statement from the admissions authority summarising the application of their admissions policy to her case and the reasons for the decision, explaining why her application was refused. It appeared that the admissions authority did not provide the clerk with any such statement.
4. The *Code of practice* issued by the Department for Education and Employment advised that such a statement should be sent to parents in advance of the appeal hearing. This particular advice was significant because it was a matter of fairness that parents should be supplied with this statement in advance so that they could prepare for the hearing.

The two stage procedure

5. In accordance with case law and the *Code of practice*, appeal committees should undertake a two stage procedure for decision making. First the committee should decide whether prejudice to efficient education or the efficient use of resources would arise if an additional child or children were to be admitted. If it would, the committee should undertake the balancing stage of deciding whether the case made by any appellant outweighed the prejudice.
6. In neither appeal did there seem to be any evidence that the appeal committee undertook that two stage procedure. It was neither recorded in the decision of the meeting nor referred to in the decision letters to Ms A.

Factors to be taken into account

7. In both appeals the committee misunderstood its role. In both cases the committee made its judgements solely on the basis of the school's admissions criteria. In both cases, the letter to Ms A setting out the decision of the committee gave as the reason that the appeal did not meet the required criteria. In both cases, the minute of the appeal committee meeting reflected the same point.
8. The *Code of practice* made it clear that an appeal committee had to take into account not only the school's admission arrangements but also the case put forward by the parent. Parents were not restricted to making arguments solely about the school's criteria, and the appeal committee had to make an independent judgement on the basis of all the arguments put forward, not just the admissions criteria.
9. Ms A did in fact consider that she had a good case in relation to one of the school's priority criteria anyway. This was the criterion relating to a medical or psychological condition of a member of the immediate family, which was the second priority. At the second appeal, Ms A explained that her youngest child, D, had serious disabilities, such that she had a good case for the admission of C under the medical criterion. The appeal committee did not give adequate consideration to this point on the grounds that Ms A had not mentioned it on the original application form.
10. The published admission arrangements stated that medical factors had to be mentioned at the time of application or if not, by the time the date for decisions to be taken on admissions was reached, and that otherwise medical factors would not be taken into account. Naturally, the governors in making admission decisions could

only take account of the information they were given on the application form. But this was not a point which should have fettered the decision of the appeal committee, which was required to take account of all the evidence put before it. At the appeal Ms A fully explained the medical point. It was wrong for the appeal committee to dismiss it solely on the grounds that she did not mention it on the original application form.

11. In the first appeal the reasoning for the committee's decision was inadequate. The committee recorded that it could not see why B was not admitted to the school in the first place but went on to say that the facts must have been taken into account when the admission was considered and therefore the main reasons for the appeal had been dealt with. That was

at best speculation, but in any event was an indication that the committee was not exercising its own independent judgement as it was required to do.

Remedy

12. Some time after the appeal in respect of B a place was offered for her when one became vacant. That was a satisfactory outcome.
13. As far as C was concerned the governors agreed to the Ombudsman suggestion that they should arrange a fresh appeal. The Ombudsman saw this outcome as a satisfactory remedy for the complaint insofar as it concerned C

(Local settlement 97/A/177)

A5: Admissions

Timing of appeals – information for parents – assessment of medical evidence

1. Mr X appealed against the refusal of a place for his daughter Y in a girls' secondary school. The appeal was unsuccessful.

What happened

2. After the appeal, Mr X submitted medical evidence to the council in support of his wish to secure a place at the school for Y. The council asked its medical adviser to assess the evidence. The outcome was notified to Mr X almost three months after he submitted the medical evidence. In the light of the medical adviser's assessment, the council agreed that Y should be placed first on the waiting

list; and also agreed that Mr X could have a further appeal. By this time the new school year had started. It was the council's practice to hold appeals only at four times during the course of the year, and Mr X was told in October that his appeal could not be heard until the next session of appeals which was in March.

3. Before the second appeal was due to be heard, a place became available and Y was admitted to the school.

The council's arrangements

4. The Ombudsman was particularly concerned about the inflexible

arrangements for appeals which fettered the council's discretion and prevented it from dealing with appeals urgently where circumstances required.

5. The council agreed to revise its arrangements:
 - to increase the number of appeal sessions in the annual cycle; and to have the facility for individual appeals between the sessions in cases where it would cause hardship to the appellant to wait for the next sessional appeal;
 - to amend the medical form in order to elicit more precise details from GPs at

the outset so that the medical adviser could assess the evidence more quickly; and

- to amend the appeal form to advise parents of the need to submit medical or other evidence before the hearing.
6. The Ombudsman considered the revision of arrangements and the admission of Mr X's daughter provided a satisfactory outcome to the complaint.

(Local settlement 97/A/240)

A6: Child protection

Advice sought about how to proceed – inappropriate request to neighbours to make enquiries

1. Mrs Russell complained about the way in which a council responded to concerns about her daughter expressed by a volunteer worker at her daughter's school. In particular, she complained that the council failed to inform her that the concerns had been reported; improperly gave the volunteer confidential information about her family; gave the volunteer inappropriate and/or insufficiently clear advice about how to discuss concerns about the welfare of her daughter with neighbours; and failed to take appropriate action when informed of the subsequent actions of the volunteer.

What happened

2. Mrs Russell's daughter, Kate, had a statement of special educational needs. Kate attended a special school from

September 1994 until June 1996, when Mrs Russell removed her from the school following an incident involving another child during which Kate was allegedly abused sexually. Mrs Russell said this was the second incident of this nature involving Kate which she had reported to the school. Mrs Russell said that Kate remained on the school roll in order to protect her position as a child with a statement of special educational needs, but she was educated at home until she was placed in an independent school in May 1996.

3. Mr B was a neighbour. He was a volunteer worker at the special school. He reported to a senior teacher at the school, Mrs A, that he was concerned about Kate as on a number of occasions he heard her crying and in obvious distress. Some concerns about Kate were also expressed to Mrs A by other staff members.

4. Mrs A contacted the council's education welfare service to discuss the concerns. She said that on occasion she did this to decide whether it was appropriate to make a formal referral to the social services department. It was agreed that two education welfare officers would visit the school to talk to Mr B. At that meeting Mr B mentioned that one of his neighbours also had concerns about Kate. One of the education welfare officers asked Mr B if he thought the neighbour wished to report her concerns to the council and Mr B said that he thought she might. One of the education welfare officers then asked Mr B to approach his neighbour and to tell her that, if she had concerns she wished to talk about to someone, she could talk to an education welfare officer in the first instance. Mr B was given a contact telephone number to pass on to his neighbour.
5. Mr B said that he called to see his neighbour (Mrs E) and outlined the concerns he had about Kate. He told Mrs E that she could contact the council if she shared his concerns and wished to talk to someone about them.
6. Mrs E told a senior welfare officer that Mr B had approached her, claiming that he represented the education department and seeking information from her about Kate. Mrs E said that she had no worries about the Russell family and she did not share Mr B's concerns about Kate's welfare. In a subsequent letter Mrs E expressed her concern that, when he visited her, Mr B divulged confidential information about the alleged sexual abuse incident at school. She also expressed concern that he appeared to have been lobbied by the school to make a statement about his concerns and had been asked to find others to do likewise.
7. Mrs Russell said that she was not aware of what had happened until Mrs E told her of Mr B's approach some weeks later.

The Ombudsman's view

8. The Ombudsman was satisfied that Mrs A, having received reports of Mr B's concerns about Kate and having regard to the other concerns referred to her by members of staff, properly took the decision to inform the education welfare officers of these concerns and to seek their advice, as she was in doubt about whether to instigate the formal child protection procedure. It was not unreasonable for the school to have acted on its concerns. Kate was still on the school roll, even though her parents had withdrawn her. The knowledge that Kate was being educated at home and not at an alternative school added to the school's concern for her welfare.
9. The Ombudsman considered it appropriate that Mr B was asked to recount his concerns about Kate to the education welfare officers in order that they could assess whether his reports justified a formal referral to the social services department. However, it was not appropriate that when Mr B referred to a neighbour who had, or might have had, concerns similar to his own, he was asked to approach her with details of whom to contact at the council. The Ombudsman said:

"In doing so, the council allowed enquiries about a sensitive matter to be undertaken in a way which was outside its control. If the council wished to confirm whether this neighbour had concerns about Kate which she wished to report, an approach should have been made by an appropriate officer of the council, one skilled and experienced in conducting this type of discreet and sensitive enquiry. I consider the council's request to Mr B to approach his neighbour on this issue to be maladministration."
10. The Ombudsman accepted that the school and the education welfare service were anxious not to instigate

the formal child protection procedures in the absence of sufficient evidence to warrant this. However, because these actions were taken informally, outside the child protection procedures, Mrs Russell was denied the opportunity to be informed of the allegations as she would have been in the context of a formal child protection investigation. She remained unaware of the concerns which had been brought to the council's attention until she was told of them some weeks later by the neighbour, Mrs E. The Ombudsman said this was very unsatisfactory and a cause of injustice to Mrs Russell.

11. The Ombudsman could not say with certainty whether confidential information about Kate and her family was shared by the education welfare officers and Mrs A in the presence of Mr B. However, it was clear from Mrs E's written account of what Mr B said to her, and from Mr B's own recollection, that he was aware of the allegations that Kate had been sexually abused at school. The Ombudsman could not say for certain if this information was disclosed to him in the course of the meeting with the education welfare officers and, on the balance of

probabilities, concluded that it was not. However, the Ombudsman was concerned that a volunteer at the school was aware of so sensitive a matter.

12. When Mrs Russell's solicitors complained to the council, it made enquiries of the school and the education welfare officers who had spoken to Mr B. The Ombudsman considered that the officer responding to the solicitors' complaint should also have spoken to Mr B to hear his account, both about what took place at the meeting with the education welfare officers and about what he said to Mrs E. However, this failure did not result in any significant injustice to Mrs Russell.

Remedy

13. The Ombudsman recommended that the council should apologise to Mrs Russell for any distress caused to her from the way that she learned about the council's concerns and pay her £150.

(Report 97/C/21)

A7: Exclusion

Original reason for exclusion not upheld by governors' disciplinary committee – original reason reintroduced at appeal committee hearing – papers not sent to appellant in advance

1. Mr Rigby complained that an appeal committee set up by the governors of a grant-maintained secondary school did not properly consider his appeal against the permanent exclusion of his son Michael.
2. Michael was aged 14. He was excluded from school because of alleged involvement in extorting money from younger pupils.

Disciplinary committee

3. The governors' disciplinary committee which considered the exclusion took the view that no firm evidence was presented by the school on the issue of extortion and considered that there was nothing for Michael to answer on that point. The disciplinary committee, however, discussed his disciplinary record and his failures to return homework and decided that the evidence of lack of commitment to the school provided grounds to uphold Michael's permanent exclusion. The disciplinary committee minuted its decision that Michael should not be considered to have been excluded on the basis of the allegation of extortion.

Appeal

4. At the hearing of the appeal committee the case for the school was presented by the deputy head. The deputy head referred to a list of Michael's misdemeanours. Mr Rigby had not previously seen this list. The list referred to failures to complete homework, instances of unacceptable behaviour, and detentions. The school had a system whereby pupils received penalty points in respect of incidents of poor behaviour, but Michael did not have enough points prior to the alleged extortion incident to warrant exclusion.
5. The deputy head presented information about the investigation of alleged extortion and represented that Michael was one of the boys involved.
6. The appeal committee decided that up to the point of the allegation of extortion there were insufficient grounds to exclude Michael, but in view of his alleged participation in the extortion, the permanent exclusion should be upheld.
7. Mr Rigby complained that at the appeal committee he was ill-prepared to deal with the allegation about extortion. Because the governors'

disciplinary committee had set aside the extortion allegation and confirmed the exclusion was only on other grounds, he expected that the appeal committee would wish only to consider the stated grounds for the exclusion.

The Ombudsman's view

8. The Ombudsman said that there had been a complete breakdown of communication. The school governors clearly intended that Michael's exclusion should not be based on allegations of extortion. Mr Rigby was told that orally by the governors' disciplinary committee. However, the head teacher's letter only confirmed Michael's exclusion and not the reasons for it.
9. The appeal committee took account of the alleged extortion in making its decision to uphold the exclusion. Once it became clear that Mr Rigby was arguing that this was not the reason for his son's exclusion and that he had not received all the relevant information in advance, the appeal committee should not have continued with the hearing.
10. The Ombudsman said:

"I have noted that no training has been provided for the clerk to the appeal committee. The role of the clerk is crucial in ensuring that facts are established and the hearing is properly conducted. The role extends beyond acting as a note taker, responding to requests for advice and maintaining the order of business. Had the clerk intervened, or the committee sought an adjournment, the true reason for Michael's exclusion could have been established."
11. The school offered to hold a fresh appeal with a differently constituted appeal committee, and the Ombudsman accepted that this was a satisfactory response to the complaint.

(Report 98/C/38)

A8: Special educational needs

Delay in statement – start of nursery provision delayed – need for comprehensive strategy review

1. Mrs Churchill complained that a council delayed in providing nursery education for her son, Frank.

nursery provision as a result of the council's delay.

What happened

2. Frank had spina bifida. When he was two-and-a-half years old, he was referred to the council by his doctor. The council carried out an assessment and its assessment panel recommended that Frank should be placed in a mainstream nursery with support from a care assistant and provision of appropriate facilities.
3. The council wrote to Mrs Churchill regretting that there would be a delay in issuing a draft statement owing to a staff shortage. The draft statement was written some three months after the meeting of the panel. But the council then did not issue it to Mrs Churchill until a further three months had passed. In response to Mrs Churchill's enquiries the council said that no decision had been made about funding the care assistant.
4. When the draft statement was issued, some six months after the recommendation of the panel, Mrs Churchill agreed the terms of the statement and Frank started in the nursery. Mrs Churchill complained that Frank had lost some months of

Outcome

5. The Ombudsman found maladministration not only in respect of the delay in writing the statement, but also the extra delay in issuing it after it had been written.
6. The Ombudsman accepted that Frank had been denied access to nursery education for a period of four months and recommended that compensation should be paid to the family in recognition of the period of delay and the stress which that had caused. The council was recommended to pay £50 for each month of the delay, and a further £150 in respect of the time and trouble caused to Mrs Churchill in pursuing Frank's case.
7. The Ombudsman also recommended that the council should undertake a comprehensive review of its approach to children with special educational needs, both in terms of the staff required to deal with the administrative workload and in terms of funding for the provision required by statements.

(Report 97/C/4)

A9: Special educational needs

Child with statement transferring from primary to secondary school – level of support – inadequate explanation by council – parent deprived of right of appeal

1. Mrs X complained about the arrangements a council made for the transfer of her son from primary to secondary school.

Transfer to secondary school

2. Mrs X's son had behavioural difficulties. The council had issued a statement of his special educational needs. At the primary education stage he spent four days a week in a special school and one day a week in a mainstream primary school.
3. In the review of the statement in the autumn term prior to transfer to secondary school, it was agreed that the boy had made good progress and that he should transfer to a mainstream secondary school with appropriate support. Mrs X was anxious to find out what level of support would be provided in the secondary school. She made a number of enquiries of the chairman of the review meeting and of the council, but the only response she could get was that the support would be 'adequate'. Even as late as 23 July a letter from the council still only referred to support being 'adequate'.

An inadequate explanation

4. It seemed to the Ombudsman that this was an inadequate explanation which gave Mrs X no real idea of what was involved. It would have done nothing to reassure her. Nor did it put her in a position where she could raise any concerns with the council if she had any. She did not find out the level of support until her son started school in the autumn term. He received support

for one half day a week. On the face of it that was a very significant change from the support level which he had prior to secondary transfer. The Ombudsman thought it was probable that Mrs X would have wanted to make representations about the level of support if she had been properly informed. But she was deprived of that opportunity because of the poor communication.

5. But the disadvantage for Mrs X went further than that. She was deprived of the right of appeal to the Special Educational Needs Tribunal. Such a right would only have arisen when the council issued a new statement setting out the revised special educational provision. The Ombudsman commented that it would have made sense to issue a revised statutory statement well in advance of the beginning of the autumn term, so that Mrs X could have exercised a right of appeal if she had felt that was necessary. In this case, a variation to the statement was issued early in the autumn term, changing the school named in the statement but not changing what was said about other aspects of educational provision

Exclusion

6. Mrs X's son made a good start in secondary school but then there were instances of poor behaviour later in the first term. After a temporary exclusion he was permanently excluded. Mrs X's view was that the level of support was inadequate and this was a major contributory factor in the breakdown of the placement. Whether the special educational provision was adequate would have been a matter for the

Tribunal to determine if an appeal had been made, and not for the Ombudsman to say. But there was a significant injustice which was that Mrs X was deprived of the right of appeal at the appropriate time.

7. Although Mrs X's son was reinstated following her appeal against the exclusion, it became clear that the placement was not working out well and the council agreed that the boy should transfer to the pupil referral unit. There was, however, a delay of some six weeks in giving effect to this decision because of flaws in the communication between the council and the unit.

Outcome

8. The injustice which was caused by fault by the council had three elements:

- Mrs X was not properly informed about the arrangements the council intended to make in the secondary school and she was deprived of the opportunity not only to make representations to the council about its plans, but also of her right of appeal;
 - Mrs X's son was deprived of education for a period because of the delay in arranging the place at the pupil referral unit; and
 - Mrs X suffered frustration, anxiety and distress and was put to a great deal of time and trouble in seeking to pursue her concerns.
9. The council accepted the Ombudsman's suggestion that as a tangible recognition of the injustice Mrs X should be paid £500.

(Local settlement 97/A/75)

A10: Special educational needs

Delays in reassessment – right of appeal affected – poor record keeping – practice incompatible with statutory guidance

1. The Ombudsman received four complaints from parents about the way a council carried out assessments of their children's special educational needs.
2. All four children had statutory statements. All the parents complained of delay in issuing amended statements and three complained that the council's policy and practice in writing statements was contrary to statutory guidance.

Delay

3. The Ombudsman found that there were significant delays in carrying out the reassessments and issuing revised statements. In one case the statement was issued nine months after the parent's request for a review and more than three months after the child had transferred from nursery to primary school.
4. In one case the council delayed in chasing reports requested from the educational psychologist and the speech therapist. The failure to record

when reports were requested was also found to be maladministration.

5. In one case part of the delay in the reassessment was due to the failure of the council to identify the correct health authority to approach for a medical assessment. The Ombudsman said that where a council's area coincided with more than one health authority area, he would expect the council to be aware of which authority it should consult when making assessments.

Communication

6. There were failures in communication. For example, in one case the council gave an assurance to a voluntary organisation that the parent's request for the statement to be finalised had been complied with when this was not the case; and the council failed to inform the parent of the reasons for delay in complying with her request.

Right of appeal

7. In one case the delay in finalising the statement meant that the parent could not exercise a right of appeal to the special educational needs tribunal in respect of transfer from first to middle school in circumstances where the council was not proposing to allow transfer to the school of her

preference. In the event, the parent was offered a place in her preferred school the day before term began. The delay caused her avoidable anxiety.

Code of practice

8. Three of the parents complained that the description of special educational provision in the statement was too vague because the provision was not quantified. While that was a matter about which the parents could have appealed to the special educational needs tribunal, the Ombudsman expressed concern that the council's policy and practice appeared not to comply with advice in the statutory *Code of practice* that statements should normally specify, detail and quantify special educational provision. The Ombudsman was pleased to note that the council had reviewed its practice.

Outcome

9. The remedies ranged from £200 compensation for anxiety and time and trouble in pursuing the complaint in one case, to reimbursement of a term's fees at an independent school (together with £200 for time and trouble in pursuing the complaint) in another.

(Report 96/B/2500 et

A11: Special educational needs

Child with statement in independent school – failure to secure review of statement at age 14

1. Mrs X's son had a statement of special educational needs which named an independent school as the appropriate provision for him. After he reached the age of 14 the council failed to ensure that the school undertook a review of his statement. The first annual review after a child reaches the age of 14 is particularly important as it prepares the child for transition into further education or any other appropriate step.
2. Because of concerns about the school the council withdrew funding for the boy once he reached statutory school leaving age a year later. Mrs X then asked the council to consider a placement at a residential college of further education. The council's view was that a local college of further education would be able to meet his

needs. An impasse continued for over a year, with no education provided by the council, until the council arranged a small amount of home tuition. Following an independent assessment of Mrs X's son's needs the Further Education Funding Council agreed to fund a residential place in a college.

3. The council accepted that its failure to carry out a review of the son's statement resulted in him reaching school leaving age without any clear plan for his future education. It also accepted that the lack of a clear plan contributed to the delay in arranging alternative educational provision. The council agreed to pay compensation of some £3,700 in settlement of the complaint.

(Local settlement 96/B/207)

A12: Special educational needs

Implementation of provision specified in statutory statement – school staff views do not override the council's statutory duty

1. Professor and Mrs Ash had a son, Anthony, who suffered from a higher level language disorder. He had a statement of special educational needs and attended a mainstream secondary school.
2. The complaint was not about the content of the statement nor about the process by which the statement was produced but about the way the statement was implemented by the school. Professor and Mrs Ash said that the school was failing to make the provision identified in the statement.

They said that as a result Anthony's education was falling below what the statement said he needed. The deficiencies in particular, in their view, included the amount of classroom assistant support, special structured programmes, and differentiation of curriculum.

The council's duty

3. The Ombudsman pointed out that under the law the council was responsible both for making and

maintaining the statement of special educational needs, and for arranging that the provision specified in the statement was made, unless the parents had made their own arrangements. In delivering the provision specified in the statement, the school acted as the council's agent; but ultimate responsibility for ensuring that the provision was made lay with the council. The Ombudsman recognised that there might be statements which left room for interpretation and, in such cases, the school staff and the council should discuss the interpretation of the statement and agree on how the provision should be made.

4. On the basis of the evidence available, the Ombudsman accepted that the special educational provision set out in Anthony's statement had not been delivered in full, and in fact was still not being delivered in full. The reasons appeared to be that Anthony's teachers did not feel that it was appropriate for him to receive as much classroom assistant support as the statement called for; and that implementing the statement in full would have severe resource implications for the school.
5. The Ombudsman said:

"It seems to me that the professional views of the teachers at the school do not override the council's statutory duty. If teachers consider that the provision described in the statement is inappropriate for the child, the mechanism for airing that view is the annual review, and the associated processes of amending or ceasing to maintain the statement. The provision cannot be withdrawn or amended unilaterally by the staff of the school."

The statutory statement

6. The Ombudsman considered that the statement agreed by the council for

Anthony was a precise and detailed document which left little leeway for interpretation. It specified the subjects in which he should receive assistance. It was unequivocal except in two respects. The first of those was in the use of the words 'appropriate classroom assistant support'. The staff argued that in certain circumstances 'appropriate classroom assistant support' could be interpreted as no support except that which was available to other pupils in the class. The Ombudsman did not accept that view. The purpose of a statement, the Ombudsman said, was to set out the provision needed by an individual pupil because of his or her individual needs. If Anthony were to receive no special provision in a given subject, he would be in the same situation as a child without special needs. Wherever some provision was identified in the statement, it had to be over and above what a child without special needs would receive: making no extra provision was not an option.

7. To the extent that the statement had been interpreted in the way contended for by the staff, the council had failed to ensure that the provision had been made. There were some subjects, and individual lessons within a subject area during which no additional classroom assistant support had been provided. The failure to make the provision specified in the statement amounted to maladministration.
8. The second respect in which the statement was open to interpretation was in its references to a 'differentiate curriculum'. On that point, the Ombudsman considered that the staff had to be free to exercise their professional judgement. There was no evidence that their judgement had been exercised in an unreasonable way except on one point. That was that Anthony was not required to study modern foreign languages but he was expected to attend history lessons

taught in French with no classroom assistance. That amounted to maladministration.

Outcome

9. The Ombudsman said that any shortfall in the provision set out in the statement was an injustice to Anthony in that he lost assistance necessary to secure him the education he was due. The Ombudsman recommended that

the council should ensure that the full provision set out in the statement was made; and make an *ex gratia* payment of £500 for each term since the statement was issued (a total of £2,000); and a further payment of £500 to Professor and Mrs Ash for their time and trouble in pursuing the complaint with the council and with the Ombudsman; and review its procedures.

(Report 97/B/76)

A13: Special educational needs

Placement by parents in independent school – subsequent appeal by parents upheld – request for retrospective payment of fees

1. Mr Hart complained that a council failed to give proper consideration to a request for the retrospective payment of the fees for his grandson's attendance at an independent special school.

What happened

2. The background was that when the grandson, Michael, was due to transfer to secondary school, his parents were concerned at the length of time being taken to assess his special educational needs, and concerned that in the July prior to the start of the autumn term they had still not been told by the council of any proposed secondary school placement. They therefore placed him in an independent school.
3. The council issued a draft statement in the October and suggested placement for Michael at a local grant-maintained school. The statement was finalised in March and named that school. The parents appealed to the special educational needs tribunal. The appeal

was upheld and the council accepted responsibility for the independent school fees from the date of the decision. The parents asked the council to pay the fees retrospectively – they had previously made a number of requests for assistance which had been rejected.

4. In addition to criticising the council's communication with the parents and the fact that agreed amendments to the committee report were not made before the report was circulated, the Ombudsman expressed concern about the way the sub-committee members considered the request for retrospective payment of fees. This was because the members took into account the argument that if the council paid retrospective fees in this case, it could set a precedent.

Discussion about precedent

5. The Ombudsman considered that the consideration of the parents' case might have been unreasonably

influenced by the irrelevant consideration of the likely impact of any decision on the claims of other parents. Officers failed to alert members to the need to consider the case on its individual merits and to inform them that any decision would not set a precedent which would commit the council to meet other claims.

6. In particular, a section of the report headed "Equal Opportunity Implications" misled members to believe that any decision on this case would set a precedent for others. It was not unreasonable for officers to point out to members that other parents of children with special educational needs who had made alternative private arrangements might consider that, on an equal opportunities basis, they too had a right to expect financial assistance. However, the report did not go on to remind members that neither Michael's parents nor any other parents had any right to expect financial assistance and that each case had to be considered on its individual merits.
7. Members were reported to have made comments about "an explosion waiting to happen" and "a dangerous precedent". But the circumstances were those of a child whose family had arranged to place him temporarily in an independent special school before the council had indicated that it proposed an alternative placement. The appeal process had taken nearly two years before the decision that the independent special school should be named in the statement. By that time Michael had been attending the school for seven terms. It was difficult to envisage large numbers of parents in identical or even similar circumstances, even had the council established a precedent by its decision, which in the Ombudsman's view it did not.

8. The Ombudsman said:

"It is undoubtedly important that the council should act consistently in making discretionary decisions. It was appropriate therefore for the report to the sub-committee to give examples of other cases where payments had been agreed and where they had not. However, I consider that in this case the sub-committee misdirected itself in discussing the question of precedent and concerns about the possible cost to the council from any other such claims in the future when it should have been discussing solely the merits of Michael's parents' case and whether or not their individual circumstances justified giving retrospective financial assistance to the family. I consider this to be maladministration."

Conclusion

9. It was clear to the Ombudsman, however, that the committee had discussed Michael's individual circumstances in detail. Having given careful consideration to the circumstances of Michael's case, it concluded these were not sufficiently exceptional to justify making a retrospective contribution towards his school fees. The Ombudsman concluded that, on the balance of probabilities, the decision would still have been the same, even without the discussion about setting a precedent. The maladministration did not therefore result in injustice to Mr Hart and his family.

(Report 97/C/66)