

Section B: Education

B1: Admissions

Two stage process of decision making – private briefing of committee members – insufficient consideration of parental case

1. Mr and Mrs A and Mr and Mrs B were refused places for their children in a grant-maintained secondary school, and complained about the way the appeal committee considered their appeals.
2. The Ombudsman agreed that in some respects the way the appeals were conducted was unsatisfactory.
6. The committee decided that it could allow seven appeals because it considered that above that number prejudice to the provision of efficient education or use of resources would arise.
7. The Ombudsman said:

Private briefing

3. Before the hearing the appeal committee members were given additional information by the headteacher which was not revealed in the statement sent to parents. The Ombudsman said:

“If admissions appeal committee members wished to clarify the headteacher’s statement then that should have been done in front of appellants so that they, in turn, could question the information and comment on it when making their case to the admissions appeal committee.”

4. No representative of the governing body attended the appeal to present the case for the governors. The Ombudsman commented that the appellants had a right to subject the school’s case to rigorous testing through questioning.

Two stage process

5. The Ombudsman found no evidence that the admissions appeal committee followed the two stage process of decision making required by law and advised in the *Code of practice*.

“If the admissions appeal committee had determined that no prejudice would be caused until after an additional seven children had been admitted, it should have identified the seven strongest cases and then, in respect of each of the remaining appeals, gone on to the further required step of considering the balance between the parental arguments for a place and the problems to be caused to the school.”

8. There was every indication that the admissions appeal committee did not appreciate the need to give this further consideration.

Individual cases

9. The maladministration in those two respects affected all the appeals.
10. In the case of Mr and Mrs B, the Ombudsman said the injustice they suffered was that they could not be sure that their appeal had received fair consideration. The Ombudsman recommended that they should be offered a new appeal hearing before a fresh appeal committee having the same obligations and power as the original appeal committee.
11. In the case of Mr and Mrs A, the Ombudsman said there was little evidence that the appeal committee gave proper consideration to the arguments presented by Mrs A in

her appeal. She sent her original application for her daughter to attend the school to the primary school and not direct to the secondary school, with the result that it reached the secondary school after the allocation decisions had been made. In the light of the admissions criteria, and as confirmed by the headteacher, her daughter would have been admitted if the application had been received before the deadline. The appeal committee did not give adequate consideration to that point, and one member certainly had assumed wrongly that the school was not Mrs A's first choice.

12. Mrs A had questioned the headteacher's absence from the appeal hearings. Two committee members and the clerk said Mrs A had been aggressive and the clerk believed that

the low rating of her appeal given by the members was a result of her aggressive manner.

13. The Ombudsman said this was irrelevant and commented:

"Statutory appeals must be determined solely on relevant grounds: an appellant's demeanour at the hearing is not, in my view, relevant to the task of the decision takers."

14. In Mrs A's case the Ombudsman concluded that if the appeal had been considered properly it would have been upheld. The remedy which the Ombudsman recommended in Mrs A's case was that she should be offered a place for her daughter at the school.

(Report 98/B/856 et al)

B2: Admissions

Evidence at appeal – advance notification

1. Mr and Mrs X complained about the conduct of an appeal against the refusal of a place for their daughter in a voluntary aided Roman Catholic infants school.

had given the form to the parish priest in good time for endorsement and forwarding to the school.

3. At the appeal hearing the governors' presenting officer produced a letter from the priest giving his detailed explanation of events. This was read out and then Mr and Mrs X were asked questions about it. The appeal was not upheld.

What happened

2. The school governors refused a place because, they said, the application form was not received until after the closing date and admission decisions had been made. In the light of the admissions criteria there was no dispute that the child would have been allocated a place if the application had been considered at the appropriate time. The parents contended that they

The Ombudsman's view

4. The Ombudsman said that the question of when the application form was submitted was crucial. Any evidence which the school wished

to submit about that should have been made available in advance to Mr and Mrs X so that they could have the opportunity to study it and consider whether they had any questions or points to make about it, and to be prepared for any questions which the appeal committee might ask of them. The appeal hearing was unfair.

Outcome

5. The Ombudsman suggested that a fresh appeal should be held. In fact the school secured funds to enable additional children to be admitted and was able to offer a place for Mr and Mrs X's daughter.

(Local settlement 99/A/2224)

B3: Admissions

Vacant place – child refused place – statutory duty

1. Mr and Mrs Mills complained that an education appeal committee, set up by a council, took irrelevant matters into account when determining their appeal against refusal of a place for their son Mark at their preferred school.

headteacher and Mr and Mrs Mills had become acrimonious.

5. The headteacher refused a place for Mark. He was the only child refused a place. The headteacher suggested that Mark should be educated elsewhere and that his two older brothers should transfer as well.

What happened

2. The school had a standard number of 170. The school told the council it had 207 applications and would like to accept them all. The council agreed that 207 children could be admitted.
3. Mark had two older brothers at the school. Under the published admissions criteria he would have been in the first 150 children accepted.
4. Because of an incident which was alleged to have happened in the school involving one of Mr and Mrs Mills' other sons and the headteacher, and because of Mr and Mrs Mills' contacts with the school over other matters, relations between the

6. Mr and Mrs Mills appealed. At the appeal hearing the council argued that the standard number had been exceeded and that there would be prejudice to efficient education and the efficient use of resources if Mark was admitted, because of the relations between his parents and the headteacher.

7. The appeal was not upheld. The decision letter explained that the committee was satisfied that the admission of Mark would prejudice the provision of efficient education for the children already at the school and would not be the best use of the council's resources; and that the parents' case for admission did not outweigh the prejudice.

The Ombudsman's view

8. The Ombudsman pointed out that the law was quite clear that if the standard number, or a higher number agreed by the admission authority, had not been reached, no prejudice could be taken to arise in admitting a pupil, and the admission authority had a duty to comply with parental preference.
9. The council's general admissions policy made no reference to any requirement for a partnership to exist between a school and the parents of a child, which was the reason given by the headteacher when explaining why Mark would not be admitted to the school.
10. The headteacher was acting on behalf of the admissions authority in refusing admission for Mark. In refusing a place the council did not follow its own admissions policy and neither did it comply with the law.
11. The Ombudsman said that it should not have been necessary for this matter to go before an appeal committee.
12. The appeal committee had a duty to consider properly the representations of both parties. If the council could not satisfy the appeal committee that one or more of the statutory exceptions to the duty to meet parental preference applied, the committee had to uphold the appeal. That was the situation here. The argument put by the council was not a ground on which a place could be refused. The appeal committee should have allowed the appeal.

Remedy

13. The Ombudsman recommended that the council should admit Mark to the school, and pay Mr and Mrs Mills £200 to compensate them for their time and trouble in pursuing the complaint and for their worry and uncertainty about education for Mark.

(Report 98/C/2730)

B4: Admissions

Use of distance as a criterion for admission – measurements inaccurate and inconsistent – insufficient information at appeal

1. Mrs Thompson complained that there was fault in the way a council reached its decision not to offer her daughter Tracey a place at School A. She said the council failed to make accurate measurements of the distance from her home to the school and gave her inaccurate and contradictory information about this.
2. The council's criteria to determine priority where a school was oversubscribed were that places were first offered to applicants with medical reasons for attending the school or with siblings already there, and the remaining places were allocated by reference to the distance from home to school.

Criteria

3. The Ombudsman recognised that the application of a geographical criterion was a common feature in admission arrangements and that measurements could be made in more than one way. The Ombudsman commented:

“It is for admission authorities to decide on what basis distances will be measured and what method is used to make the measurements. Whatever they decide, it is of the utmost importance that the measurements are consistent and accurate and that parents have confidence in their accuracy.”

Measurements

4. In this case measurements were made on the basis of the shortest walking route. But the Ombudsman found that arrangements in place for making those measurements were haphazard in the extreme. Contradictory and inadequate information was provided by the council, first to Mrs Thompson and then to the Ombudsman, about precisely how far Mrs Thompson lived from the school. It also became clear that a child who lived further from the school than Tracey had been wrongly offered a place there.
5. When the council told Mrs Thompson that it was unable to offer Tracey a place at the school, it gave her no information about the key distances. That information was not provided in the written case made by the council for the appeal. At the appeal hearing there was no map available to show the location of those children who had been offered places on geographical grounds. The council’s presenting officer gave information to the hearing about the distance from home to school for Tracey and for the last child to be accepted under the geographical criterion. But that information was subsequently shown to be incorrect.
6. The Ombudsman found that officers were using outdated maps which did not show recent housing developments. Different officers measured the same routes between home and school and produced different results. Even where the same officer re-measured his or her previous measurements the results were inconsistent.

Outcome

7. The Ombudsman accepted that even if the council had not wrongly offered a place to another child, the place would not have been offered to Tracey as she lived further away from the school than several other children who wanted a place there. Tracey started at another school but the council later approved an application for her to transfer to School A.
8. The Ombudsman considered that Mrs Thompson had been caused a great deal of unnecessary stress and anxiety and that she had been subjected to unacceptable uncertainty as to the reliability or otherwise of the council’s measurements. The Ombudsman recommended that the council should pay her £500.
9. The Ombudsman recommended that the council should review its arrangements for allocating school places, including the arrangements for measuring home to school distances. The Ombudsman also recommended that the council should provide appellants with information about the key distances involved.

(Report 98/C/2753)

B5: Admissions

Written case made by the council in advance of the appeal hearing was too generalised

1. In connection with an appeal against admission to a primary school, the Ombudsman expressed concern about the written case circulated by the council before the appeal.
4. The clerk did not record a decision on this first question, and that in itself cast doubt on the appeal committee's consideration of the point. In the Ombudsman's view an adequate case for prejudice was not fully made at the first stage of the process and that was maladministration.

The case for prejudice

2. The Ombudsman said that the case circulated by the admission authority was non-specific and far too general. There was an undue emphasis on the standard number or other admission limit rather than an explanation of the likely adverse effects at the school if additional children were admitted.
3. Extra information was provided at the hearing itself. But the Ombudsman did not accept that, even then, enough information was available about the anticipated likely adverse effects at the school to sustain a finding that the admission of one or more extra children would cause prejudice to efficient education or the efficient use of resources, which was the first question which the appeal committee had to consider.
5. The Ombudsman commented:
"The generalised nature of the written case also causes further potential problems. Parents need to prepare their position in advance. They are entitled to the council's full arguments at the outset and not only at the hearing itself."

Outcome

6. Although there was maladministration, the Ombudsman concluded that there was not a consequent injustice calling for a remedy. However, the Ombudsman expressed the hope that the council would take account of her comments for the future.

(Report 98/C/1370)

B6: Admissions

Briefing of appeal committee without appellants present – interviewing of children – two stage procedure – inappropriate constitution of appeal committee

1. Mr Grady complained about the actions of an appeal committee for a secondary school where the governors were the admissions authority. The Ombudsman found that the conduct of the appeal was unfair and biased for the following reasons.
2. One member of the appeal committee was unable to attend the appeal. The school filled the vacancy with a governor who normally acted at appeals as presenting officer for the

Membership

school's case. The governor who filled the vacancy said that, although no-one appeared at the hearing of Mr Grady's appeal formally on behalf of the governors to put the school's case, she herself covered the ground of her normal presentation. She said that in effect she was wearing two hats. The Ombudsman found this extraordinary and commented:

"Given her normal role I doubt she could ever be seen as a proper choice and her actions cast doubt on the fairness of the entire proceedings."

Advance briefing

3. Before the appeal hearings and without any appellants being present, the appeal committee was briefed by a member of the school's staff who said that the school was full and had a waiting list. The Ombudsman said that this not only created the appearance of unfairness but was in fact unfair. The law required the appeal committee to establish for itself whether prejudice to efficient education or the efficient use of resources would arise by the admission of the appellant's child. The governors' case, the Ombudsman said, should be tested openly before the appellant, who should be able to question that case.

Attendance of children

4. It was the appeal committee's practice to ask that the children of parents appealing should attend the appeal and be questioned. The members explained that they tried to establish what a child could offer the school. The Ombudsman expressed concern about this approach which was contrary to advice in the *Code of practice. Appeals*, the Ombudsman commented, were occasions which

many children would find difficult. In any case, it was clear that the committee was stepping outside its remit which did not include considering how a child might benefit the school.

Decision making

5. The Ombudsman criticised the committee's approach to decision making. The appeal committee assessed how many of the places already offered by the governors might be turned down, and decided to allow appeals up to that number. There was no evidence that the committee decided whether or not prejudice would arise if Mr Grady's daughter was admitted, and the appeal notes did not record any such decision. If the committee was satisfied on the prejudice point it was required to proceed to the second stage: consideration of whether prejudice to the school was outweighed by the case made by the parent. That second aspect was entirely ignored.

Outcome

6. The Ombudsman concluded that the conduct of the appeal contravened guidance and the rules of natural justice and was unfair and biased.
7. The governors agreed to arrange a fresh appeal.
8. The Ombudsman accepted that this was an appropriate response and said that if the appeal was successful Mr Grady should be reimbursed any costs incurred through his daughter changing schools. In any event, he should be paid £100 for the time and trouble to which he had been put.

(Report 98/C/1521)

B7: Admissions

Place in a secondary school offered by the council – refusal by the headteacher to admit the child

1. A teenage boy, Jason, complained that he was wrongly turned away from his new secondary school on the day he was due to start there.

What happened

2. The school was appropriate to Jason's age and needs. As there were places available at the school, the council as admissions authority was obliged to comply with his mother's preference for the school. The council offered Jason a place.
3. But when Jason arrived on the first day of term, the deputy headteacher, acting on the headteacher's instructions, said the school was not prepared to take him and asked him to leave the premises.

The council's duty

4. The council told the Ombudsman that by offering a place it had discharged its duty to Jason's mother, even though the headteacher did not allow Jason to take up his place at the school. The Ombudsman said that could not be right. A place had to be available for Jason to take up if the council's offer of a place was to be worth anything at all. In this case, the offer was sufficient to get Jason to the gates of the school but not enough to get him admitted to the classroom. In those circumstances it was clear that the council did not discharge the duty it owed to his mother to meet her school preference.
5. No reason was given by the deputy headteacher at the time for the refusal to admit Jason. The headteacher later gave three reasons for the refusal but

the Ombudsman said that none could be justified. The headteacher's first reason was that there had been problems in the past with Jason's older sister when she attended the school. The Ombudsman said that no child should be penalised for the alleged shortcomings of a sibling. The second reason was that the headteacher believed there were places available in nearer schools and it would be profligate of the council to provide subsidised travel for Jason. The Ombudsman found that Jason had not been offered subsidised travel in fact but, even if he had, that was an irrelevant consideration. The headteacher's third reason was that Jason had had difficulties at a previous school. The Ombudsman said that that should not have deprived him of a fresh chance at a school to which he wished to transfer.

6. The council said that the action of the headteacher was unreasonable and probably unlawful. But the council argued that this was not maladministration by the council. The Ombudsman did not accept that. The headteacher was acting on the council's behalf in administering the final stage of the admissions process.

Injustice

7. The injustice to Jason was twofold. He had friends at the school and was denied the chance to join them and to make a fresh start in a group of pupils starting at the school together. Furthermore, the way he was turned away from the school was personally insulting. It was done in an open reception area, in front of other children and the other children overheard the conversation.

Remedy

8. The Ombudsman recommended the council to pay Jason £1,000 and apologise to him for the way he was treated. Jason's mother had not complained to the Ombudsman herself. But the Ombudsman was in no

doubt that she must have been hurt by the way Jason was treated and by the frustration of her rights as a parent, and he expressed the hope that the council would take action to recompense her also.

(Report 98/B/685)

B8: Exclusions

Failure to follow guidance in the *Code of practice* – gaps in evidence – admissibility of evidence

1. Mrs X complained that the appeal committee established by the governors of a grant-maintained secondary school did not properly consider her appeal against the decision of the governors not to reinstate her daughter Y after her permanent exclusion from the school.
2. The exclusion of Y and another girl followed a serious incident at the school. The appeal committee did not uphold Mrs X's appeal against the exclusion.
3. The Ombudsman had no doubt that members of the appeal committee acted in good faith but pointed to a number of faults in the way the appeal was handled.
4. In some important respects the appeal committee did not follow the guidance set out in the *Code of practice* published by the Department for Education and Employment. The Ombudsman said that appeal committees should follow that guidance unless there were good and demonstrable reasons why they should not.
5. The appeal was heard in the headteacher's office at the school from which Y had been excluded. That was contrary to the *Code*. It was also contrary to the *Code* that the headteacher presented the case for the school at the hearing.
6. The Ombudsman was also concerned about the presentation of evidence. The school had not asked Y to give her account of the incident and what part (if any) she took in it. In fairness to Y, her evidence should have been available to the appeal committee before it reached its decision. Although her parents spoke on Y's behalf that was not, in the Ombudsman's view, a satisfactory substitute for their daughter's own evidence. The Ombudsman found therefore that the appeal committee was at fault for neither deferring the hearing until a written statement by Y was available, nor adjourning while a statement was obtained.

Procedures

7. Moreover, the school took written statements from only four of the eight or nine children who the headteacher believed were present at the incident. The Ombudsman said that, in view of the gravity of the allegation and the serious consequences for Y, statements should have been taken from all the children. The appeal committee was at fault for not seeking those additional statements before deciding the appeal.
8. Before the hearing, the headteacher sent the appeal committee a note about Y's previous conduct. A copy was not sent to Y's parents. The headteacher also referred to an alleged telephone call by Y to another pupil, and the alleged views of the headteacher of Y's primary school. The appeal committee did not say – but, in the Ombudsman's view, should have said – that the note, the alleged telephone call and the alleged views of the previous headteacher were inadmissible because the parents had not been sent the note in advance, and because the allegations were uncorroborated by written statements.

Outcome

9. The Ombudsman said that, because of these faults, Y and her parents would always feel that they were denied the full and fair hearing to which they were entitled. This was an injustice.
10. Y had moved to another school and Mrs X did not want her to return to the school from which she was excluded. The Ombudsman did not therefore recommend that the appeal should be reheard.
11. The Ombudsman recommended that:
 - in recognition of the injustice, the governors, on behalf of the appeal committee, should pay Mrs X £250; and
 - the governors should ensure that the *Code of practice* should be fully observed in future.

(Report not for publication 98/A/4646)

B9: Exclusions

Severe delay in making alternative arrangements for a boy's education following exclusion from his school

1. Mr and Mrs Bradley complained of delay by a council in making suitable arrangements for their son John's education.

What happened

2. John was excluded from his secondary school for violent behaviour. The council upheld the decision of the school's governors and decided that

John should be placed at an alternative mainstream school. Mr and Mrs Bradley were merely told that the council had decided to uphold the exclusion.

3. The council discussed the possibility of John's admission to the other school with its headteacher. Such discussions would normally take two or three weeks. But in this case it was eight weeks before the discussions were concluded.

4. In the meantime, John was involved in a serious incident in which pupils walking to school were shot at with an air gun. In the light of this incident the council reviewed the decision for an alternative placement for John in a mainstream school and decided that placement in a pupil referral unit (PRU) would be more appropriate. In fact no place at a PRU was ever made available. The demand for places exceeded supply. The council made some arrangements for John to receive home tuition but the Ombudsman considered that the tuition was sporadic and otherwise unsatisfactory. There was also a lack of proper communication with Mr and Mrs Bradley.
5. After the incident with the air gun the council decided to carry out a risk assessment to determine what risk, if any, John would pose if he were to return to mainstream schooling. But the council took no action on this assessment for nine months.
6. Eventually John returned to a mainstream school, 17 months after his exclusion.

The Ombudsman's view

7. The Ombudsman said that this case was characterised by drift and lack of communication.
8. The council said that John's return to mainstream education was successful

and John did not appear to have suffered any educational disadvantage from the 17 months he had been out of school. The council was also willing, if necessary, to provide additional teaching for him. The Ombudsman commented:

"There is no doubt that John's misconduct was extremely serious. As a consequence he was permanently excluded and later denied a place at an alternative school. The subsequent delay in securing a PRU place and the lack of an effective alternative was not of his making, however, and his violent conduct should not be used to justify a lack of remedy for that. I cannot accept that, at John's age, a prolonged period away from school has had no significant effect on his education."

Remedy

9. The Ombudsman recommended that the council should finance items or activities (such as computing equipment, additional tuition or suitable extra-curricular activities) to the value of £500 in order to enhance John's educational development. The Ombudsman also recommended that Mr and Mrs Bradley should be paid £250 in recognition of the worry and inconvenience caused to them.

(Report 98/C/2897)

B10: Special educational needs

Child with statement – transfer from primary to secondary school – wrong procedures followed – factors to consider in review of arrangements – suggested basis for procedures

1. Mrs X's daughter, Y, had a statutory statement of special educational needs. Mrs X complained about the arrangements for Y's transfer from primary to secondary school.

What happened

2. The statement was issued by the council in the September of Y's final year in primary school.
3. Mrs X applied for a place in a school where the governing body was the admissions authority. The school refused a place. Mrs X appealed to the independent appeal committee for the school. The appeal was not upheld.
4. It was not appropriate for the independent appeal panel to hear the appeal, because Y had a statement. In fact it was unlawful for the committee to do so. Appeals in respect of children with statements had to be made to the Special Educational Needs Tribunal.
5. Y was also refused a place at Mrs X's second preference school, where the council was the admissions authority. Her appeal against that refusal was about to be heard by an appeal committee set up by the council when she complained to the Ombudsman.
6. Mrs X only discovered the true position about her right of appeal in June of the final primary year, after she complained to the Ombudsman. It was then too late for her to appeal to the Tribunal since one of the statutory processes would have had to be followed to put her in a position to appeal, and the Tribunal would have then had to consider the appeal (and that usually took four months).

What went wrong

7. The Ombudsman found that there were a number of things which went wrong:
 - the council did not tell Mrs X about admission and appeal arrangements for children with statements;
 - the council did not follow one of the statutory procedures for transferring a child with a statement from one school to another;
 - in the period when the issue of a statement was under consideration, Mrs X told the council she would like a place in her first preference school, but the council did not make any connection between that request and the beginning of the primary to secondary transfer season; and
 - the council did not take any initiative in the autumn term before transfer to ask Mrs X, as a parent of a child with a statement, about her school preference so that it could then follow the requisite statutory steps.

Outcome

8. Once the Ombudsman told the council of the problem, it acted decisively, together with the school, to achieve a good solution. Y was offered a place in the first preference school. The Ombudsman commended the council for its positive and helpful action and also expressed appreciation of the helpful and co-operative approach of the headteacher of the school in considering a difficult situation which arose late in the day.

Review of arrangements

9. The Ombudsman suggested that the council's arrangements should be reviewed, and that the review should take into account that:

- appeals to the Special Educational Needs Tribunal take something like four months to run their course;
- parents of children with statements should not be put in a more disadvantageous position than other parents;
- parents cannot be expected to know, without being told, that admission and appeal arrangements for children with statements are not the same as they are for other children, and there is a need for parents to be given the necessary information in good time; and
- the timetable for the process of transfer from primary to secondary school for children with statements should be such that, if it is necessary for parents to appeal, they should know the outcome in good time for the start of the autumn term.

10. In the light of these general points, the Ombudsman suggested that as a minimum the arrangements should cover the following points.

- At the beginning of the autumn term preceding transfer, the council should check that it has a complete list of all children with a statement who are due to transfer to secondary school the following September. This list should include children in schools outside the council's area for whom the council is responsible as well as those in its area.
- The council should monitor this list and ensure that it is kept up-to-date, particularly to ensure that children

having a statement for the first time after the start of that autumn term are included in the arrangements.

- All parents of children on this list should have written information from the council explaining the arrangements for admissions and appeals.
- Throughout the early part of the autumn term the council should review the position with parents and invite them to state a preference for a secondary school, with all preferences to be gathered by the end of November at the latest.
- As parents' preferences are made known the council should carry out any necessary consultation with schools and should give parents a decision about what school can be offered as soon as possible and in any event not later than the end of January.
- If any parents are not offered a place at their preferred school the council should take one of the statutory steps which would entitle the parents to appeal. They should be notified of their right to appeal to the Special Educational Needs Tribunal, also by the end of January, so that they then have time – if they wish to appeal – to enter their appeal, have it heard, and for the Tribunal to make a decision, so that the outcome is known in reasonable time before the start of the autumn term.
- The council should set up monitoring arrangements so that progress can be regularly checked and the council can ensure that the appropriate action is taken for every child on the list.

(Local settlement 99/A/1132)

B11: Special educational needs

Residential placement – change of circumstances – disagreement between council and parents about what type of provision was needed – failure of the council to take action which would enable the parents to appeal – child placed in overseas school

1. Mr and Mrs A complained about the way a council considered provision for their son B. B had had a statement of special educational needs for some years.

support they were seeking. That school was in America and offered a 30-month course. Mr and Mrs A committed themselves to expenditure of over £100,000 which they had to raise through loans.

What happened

2. B had a specific learning difficulty, and emotional and behavioural difficulties. He attended a specialist residential school for pupils with specific learning difficulties. That placement was funded by the council.

3. At the age of 14, B was excluded from the school. Mr and Mrs A asked the council to arrange a place in a residential school able to deal with B's educational and behavioural problems. The council decided that a residential placement was no longer required and a local school or college could meet B's needs.

4. The council said nothing to Mr and Mrs A about how a right of appeal might arise. Mr and Mrs A thought they had no option but to accept the council's decision. They made extensive enquiries of various schools and colleges but thought that none had suitable provision to address B's emotional or behavioural problems.

5. B was getting into frequent trouble, often involving the police. He was violent and threatened suicide. Mr and Mrs A thought he needed proper help in a controlled and therapeutic environment. They decided to send him to the only school they had found that could offer him the academic, emotional and behavioural

6. Mr and Mrs A asked the council to fund or contribute to the cost of this placement. The council declined to do so. The council, on further consideration, later agreed that residential provision was appropriate and applied for places at a number of schools in England. None was able to offer a place. Eventually the council offered a place in a day school and issued a new statement. Mr and Mrs A appealed but the Special Educational Needs Tribunal struck out the appeal because B was by then above statutory school leaving age and although he was on the roll of a school it was not a school in England or Wales.

7. B made good progress at the American school and completed the 30-month course.

Faults by the council

8. The Ombudsman accepted that the council was entitled to revise its view about the need for residential provision, as it did when B left his school in England. But the difference of view between the council and the parents on that point should properly have been resolved by an appeal to the Special Educational Needs Tribunal. The council knew that the parents had no right of appeal unless and until the council took some action either to amend or terminate the statement.

The council did not set about doing either of those things, and did not explain to Mr and Mrs A how a right of appeal could arise. The result was that they were deprived of the right of appeal at the critical time.

9. The council suggested to Mr and Mrs A that they should seek an alternative placement for B. But the council did not monitor what was happening or seek to satisfy itself that appropriate provision for B was identified. B had a statement and moreover he was still of statutory school age. In those circumstances it seemed to the Ombudsman unsatisfactory that no monitoring took place and the council made no enquiries about what was happening.
10. It took the council a year to offer a new school placement and produce a new statement. Effectively Mr and Mrs A were prevented from exercising a right of appeal until it was too late.
11. The council failed to consider the possibility – which the relevant legislation would have allowed – of making a contribution to the cost of the place at the American school, as opposed to meeting the total cost.

Effect of faults

12. The council's faults which had the most significant effect were the failure to explain at the outset how a right of appeal could arise; and the failure to take any action which would have put Mr and Mrs A in a position where they had a right of appeal. The fact that they could not exercise any right of appeal made them powerless to resolve the difference between themselves and the council about appropriate provision.

Outcome

13. The Ombudsman considered that a reasonable outcome would be for the council to make a payment to Mr and Mrs A based on the likely cost of residential provision in England starting from the date when the council accepted that residential provision was needed. The council agreed to make a payment to Mr and Mrs A of £38,700.

(Local settlement 98/A/12)

B12: Student grants

Discretionary awards – review arrangements – criteria and guidelines

1. Mr X complained that a council did not properly consider and review his application for a discretionary award to enable his daughter, Y, to attend a course in dance at a private specialised dance college. In particular, he complained that the council did not define and establish clear criteria for exceptional circumstances and did not

establish an appropriate appeals procedure.

Review

2. The Ombudsman considered that the council's arrangements for reviewing decisions about discretionary awards

were not suitable. It was not appropriate for the same officer who was responsible in many cases for taking the initial decision – and certainly for conveying the decision to the applicant – also to be responsible for the review. The Ombudsman did not doubt that the senior education officer concerned was conscientious and impartial but said that a review should be transparent and should seem fair to those being reviewed. The council could be criticised for failing to ensure that the original decision and the subsequent review were undertaken by different officers. Applicants could not have faith that their circumstances were reviewed impartially.

Criteria and guidelines

3. The council did not issue criteria to applicants advising them of the circumstances which might count as exceptional for the purposes of review.

Neither did it have guidelines for the use of officers. While there was no legal duty to have criteria and guidelines, the Ombudsman considered it poor administrative practice not to have them.

Outcome

4. Under new arrangements introduced by the council part way through Y's course, she was assessed by the council as having exceptional talent and received an award for the second and third years of the course.
5. In response to the complaint, the council agreed to pay the amount which it would have paid if it had agreed to give her an award for the first year of the course. That was £10,949. The Ombudsman agreed that this was a satisfactory resolution of the complaint.

(Local settlement 97/C/4608)

B13: Student grants

Suspected fraud – public figure – leak of confidential information – need for prompt investigation

1. Mr Smith complained that fault by a council led to confidential information about an application he had made for a student grant being passed to the national press and referred to the police.

What happened

2. Mr Smith applied to the council for a mandatory grant to read for a degree. He did not disclose on his application form that he had received a grant from

another council for a previous degree course. He was not, therefore, eligible for a mandatory award.

3. Mr Smith telephoned the council to say he wished to study for an HND, not a degree. He said he explained that he had already had an award. He did not confirm this in writing; nor did the council make a note of the conversation. The council awarded Mr Smith a mandatory grant to study for an HND.

4. Some time later, a council officer learnt that Mr Smith had previously received a mandatory grant. Officers decided that there were grounds for strong suspicion of deception. It was the council's practice to refer such cases to the police. Officers could have referred the matter to the police themselves but decided to consult some council members in view of the fact that Mr Smith was a well-known public figure. The members agreed that the case should be dealt with in accordance with the council's normal practice, and an officer informed the police.
5. On the day after the members were consulted, the council received a telephone enquiry from a local journalist about Mr Smith's grant. The local journalist was the daughter of one of the councillors who had been consulted, Councillor Y. On the same day, Mr Smith received an enquiry about his grant from a national newspaper and was asked if he had made a bogus grant application.
6. Two days later, the police arrested Mr Smith and released him on bail. A story about his grant appeared in a national newspaper the day after he was arrested.
7. Mr Smith was charged. He was later acquitted. He made arrangements for the repayment of the grant.

Confidential information

8. The Ombudsman concluded that it was reasonable for the council to refer the case to the police and that some council members were consulted before that was done. But the Ombudsman was critical of the way Councillor Y acted after receiving papers from officers about the case. Councillor Y said that, as far as she recalled, she photocopied the papers, threw the original fax and one copy into an insecure waste bin and left some of the remaining copies on the

table in a meeting room, assuming that officers would clear away papers in the usual way. She also recalled discussing the case with other members while some external consultants were in the room. The Ombudsman said:

"To my mind, this reflects a deplorable lack of care in the handling of personal information given to the council in confidence."

9. The Ombudsman found no evidence that Councillor Y was the source of the leak. The Ombudsman was unable to establish who leaked the information but considered that the council was the most probable source. The improper disclosure was maladministration.
10. The Ombudsman was told by senior council officers that the leak was far from unique. The Ombudsman considered that members should take a lead in stamping out the problem and should take all necessary care with confidential information entrusted to them.
11. The Ombudsman also criticised the council for not conducting a prompt investigation of the leak and found that that failure too was maladministration.

Outcome

12. The Ombudsman found that the leak caused Mr Smith injustice. He was understandably outraged that the first he had heard of the allegation was from the press rather than the council or the police.
13. The Ombudsman recommended the council to pay Mr Smith £250 and to consider conducting leak enquiries promptly in the future.

(Report 98/A/1835)