



Section C

# Education

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# C1: Admissions

## Prejudice test – training – role of clerk – appeals timetable

The Ombudsman received complaints from parents of 12 children that an appeal panel did not properly consider their appeals for the admission of their children to their preferred secondary school. The school was a foundation school and the admissions authority was the governing body of the school.

### Prejudice

1. The *Code of practice on school admission appeals* issued by Parliament, reflecting a legal requirement, advised that appeal panels needed to consider first whether the admission of an additional child or children would cause prejudice to the provision of efficient education or the efficient use of resources. Panels had also to consider, if they were satisfied there would be prejudice, whether any of the cases made by the parents outweighed the prejudice.
2. The Ombudsman was not satisfied that the panel considered properly the question of prejudice. The school's case to the panel made no mention of difficulties which would arise if more children were to be admitted to the school. The school simply re-stated its admissions number and that it would be detrimental to the education of all the students to admit more children.
3. The Ombudsman pointed out that this was contrary to the *Code of practice* and was maladministration. The panel had little evidence on which to base any decision about whether prejudice would be caused by additional admissions.

### Training

4. The Ombudsman found no evidence that training was arranged for the clerk

or members of the panel. It was the responsibility of the admissions authority to arrange training: its value was given great emphasis in the *Code of practice*. Failure to arrange such training was maladministration.

### Role of clerk

5. The Ombudsman commented that, if the clerk had received training, he would have been better able to advise the panel on the processes they needed to undertake.
6. The proper role of the clerk was solely to advise the panel. But he adopted a dual role. There was some uncertainty about the number of places accepted by parents at the time of the appeal. The clerk was also the clerk to the governors and he adopted the role of explaining to the panel the position about numbers. That question should have been for the school's representative to address.

### Timetable

7. The programme for the appeal hearing set aside 10 minutes for each case. The panel members all said the time was adequate and, if hearings overran, they were able to catch up later. But the Ombudsman commented:

*"The timescale set down was likely to generate the perception that the appeal hearing was no more than a token exercise, bearing in mind that time should be allowed for the school's case to be fully presented and questioned as well as the parents' case."*

### Assessment

8. There were 81 appeals. The Ombudsman was satisfied that the assessments of each appeal made by the panel members reflected the evidence about each of the parents' cases as recorded by the clerk. Twelve appeals were upheld. All those had a higher ranking under the panel's assessments than the appeals of the parents who complained to the Ombudsman. The Ombudsman was therefore satisfied that no injustice arose.

### Outcome

9. As there was no injustice, the Ombudsman did not need to recommend a remedy for any of the complainants. But the Ombudsman commented:

*"I urge the school to examine in detail the steps it might take to ensure that the number of pupils expected to attend the school is in no doubt. It should certainly examine closely its selection and training of the appeal panel members, and most importantly ensure that the panel has the services of a clerk who is able to advise a lay panel on the correct procedure and ensure that it follows the Code of Practice as laid down by Parliament. Any deviations from the Code should be properly recorded and reasons given. The statement of the school's case should fully explain the reasons why additional pupils should not be admitted."*

*(Report 01/C/3800 et al)*

## C2: Admissions

### Faults in admission decisions – faults in appeal

Mrs Gloucester complained about events surrounding her application for a place in a selective school and the appeal process. The school was a foundation school where the governing body was the admissions authority.

Mrs Gloucester complained that the appeal process was unfair and failed to comply with statutory requirements, thereby prejudicing her appeal.

#### Faults

1. The Ombudsman made a number of criticisms.
2. In the letter to parents advising them that their child had not been offered a place, the school failed to advise them of their right of appeal to an independent appeal panel.
3. Prior to the independent appeal, parents could appeal to a governors' admissions committee. But the school failed to make clear to parents the terms of reference, and the committee had no guidelines to assist its consideration of the appeals.
4. Mrs Gloucester was not provided with a copy of the school's submission to the independent appeal panel until the day of the hearing.
5. The headteacher was allowed to leave the appeal while it was still in progress.
6. Both the letter advising Mrs Gloucester of the decision of the governors' admissions committee, and the letter giving the decision of the independent appeal panel, failed to give detailed reasons why the appeal was unsuccessful.
7. The school's submission to the independent appeal panel stated that to admit more pupils would mean that the school would be extremely overcrowded. It did not say what the effect of such overcrowding would be. The panel therefore failed to consider properly the test of whether there would be prejudice to the provision of efficient education or the efficient use of resources if more children were admitted.
8. The governors did not select pupils in accordance with the published admissions criteria. They made no use of the provision for the selection of up to 10 per cent of the admission number of pupils likely to contribute to the life of the school in some way not directly related to academic achievement, for example through musical, sporting, dramatic or other talent. The governors fettered their discretion by not considering this criterion at all. There might have been pupils who satisfied the criterion.
9. The independent appeal panel failed to consider whether the school had properly applied its admissions criteria, and itself failed to take all the criteria into account when considering the appeals.

#### Outcome

10. Mrs Gloucester's son settled happily into a new school. The Ombudsman did not consider that the offer of a new appeal would serve any useful purpose. The necessary outcome to the complaint was therefore that the governors should review the way in which they operated the admissions and appeal processes, taking into account the areas of maladministration identified and, where appropriate, arrange for training for those involved.

*(Report 00/B/3812)*

## C3: Admissions

Church of England school – admissions criteria not properly applied – panel had private discussions with the clerk to the governors

Mr A complained about the handling of his application for a place for his daughter, B, at a Church of England voluntary aided school.

### Admissions criteria

1. The governing body was the admissions authority for the school. The published admission arrangements explained the criteria for deciding which applications to accept if the school was oversubscribed.
2. The first criterion was that priority would be given to girls from practising Church of England families living in a defined area. If more applications met that requirement than there were places available, tie-breakers would be applied. The tie-breakers were children with a sister already in the school, children with a parent or guardian who was a former pupil, and children who attended a Church of England primary school.
3. There was no dispute that the application for B met the terms of the first priority criterion. She was not offered a place. Mr A appealed.

### Before the appeal

4. The Ombudsman found that, before the hearings, the appeal panel had a discussion with the clerk to the governors. The panel members asked questions about the application of the admissions criteria.
5. The Ombudsman pointed out that the appeal panel was quite wrong to do this. The panel should not have met a representative of the admissions authority in a private session before the hearings. It should have been obvious to the panel that this was unfair but, in any

event, the *Code of practice on school admission appeals* issued by Parliament gave quite specific advice on the point. The Code emphasised that appeal panels were independent of the admissions authority and had to be seen to be so, and that they had to follow fair procedures. The Code said that panels should not have discussions with representatives of the admissions authority before the hearings, and advised that care should be taken to ensure that no party attending the hearing was present alone with the appeal panel in the absence of the other party.

6. The result here was that the appeal panel had information from that briefing which could well have influenced, and probably did influence, their approach to the appeals. But appellants had no opportunity to question or challenge what was said; or even to know what was said. That was a fundamental breach of the principles of fair procedure.
7. The Ombudsman said that was an important point in itself. It was even more important in the light of what he found on how the admissions criteria were applied.

### Application of criteria

8. The first priority criterion involved the determination of one question – was the candidate living in the defined area and from a practising Church of England family? The answer to that question had to be yes or no. Either the criterion was met or it was not.
9. But the Ombudsman was concerned about the statement in the decision letter refusing a place that “those who were accepted under the church

criterion demonstrated very strong church credentials indeed". The Ombudsman was also concerned that the statement by the governors in their written submission to the appeal panel gave the explanation "others had a stronger case for admission".

10. Those statements suggested that the first criterion was treated as a competition and not as a test to which the answer was yes or no. So the admission arrangements were not properly applied. The obligation of the governors was to apply the published criteria. Not to do so, but instead to apply some secret criterion, was a serious fault.
11. B met the first priority criterion. That criterion was oversubscribed. So the tie-breakers should have been applied. B attended a Church of England primary school so, unless all the places were filled under the tie-breakers of present siblings or parent or guardian being a former pupil, B would have got a place. But it appeared that the governors did not apply the tie-breakers at all.
12. The Ombudsman pointed out that one of the tasks of the appeal panel, though not the only one, was to consider whether the admission arrangements were properly applied. It seemed the panel was not presented with any evidence which would have provided the basis for a conclusion that the admissions criteria were properly applied. In the light of the evidence, it seemed that a conclusion that the arrangements were properly applied could not be justified.
13. If the appeal panel had concluded that the arrangements were not properly applied, it should then have gone on to consider whether the outcome was that B was wrongly denied a place. A conclusion on that point would have depended on the facts and the panel made no attempt to examine the point.

#### Outcome

14. The Ombudsman suggested that Mr A should be offered a fresh appeal and that a new appeal panel should pay particular attention to the question of the application of the criteria and whether B was wrongly denied a place.
15. The governors agreed to arrange a fresh appeal. The Ombudsman agreed that was a satisfactory resolution of the complaint.
16. The new appeal panel upheld Mr A's appeal, and B took up a place at the school.

*(Local settlement 01/A/10989)*

## C4: Admissions

### Catchment areas – parental preference – closing date – whether council's duty fulfilled

Mr and Mrs Windsor and Mr and Mrs Warwick complained that a council did not properly allocate places for their daughters at high school. They said the council failed to comply with its legal obligations to give precedence to parental preference.

#### The council's arrangements

1. The admission arrangements published by the council indicated that it would provisionally allocate places at each school for pupils living within the school's catchment area, or those who had older siblings at the school. Parents would be sent a form to complete and they could accept the catchment area place or ask for a place at a different school. Parents had to confirm acceptance of the provisional allocation or express an alternative preference before the closing date of 21 January of the year of entry.

#### Law and guidance

2. The Court of Appeal, in what is commonly known as the 'Rotherham Judgement', held that an admissions authority could operate a catchment area criterion for oversubscribed schools. But the court said that an admissions authority had to give precedence to parents who expressed a positive preference for a particular school ahead of those who, although living within the catchment area, did not do so.
3. This judgement was reflected in the *Code of practice on school admissions* issued by Parliament. That *Code* included the advice that authorities should not make any firm guarantees to parents in a local catchment area, particularly if those parents did not express a preference for the school.

#### What happened

4. Mr and Mrs Windsor and Mr and Mrs Warwick applied for places in a school. In both cases the school concerned was not their catchment area school.
5. In the case of both schools, the position at the closing date was that there were still places available after taking account of applications for children living in the catchment area or with siblings at the school. The council had received requests from parents living outside the catchment area in both cases.
6. In early February council officers telephoned all parents who had not returned a form. That prompted more applications. At the end of the month when allocations were made the number of applications from within the catchment area and for children with siblings exceeded the admissions number at both the schools.
7. The council refused a place in the preferred school for the daughters of Mr and Mrs Windsor and Mr and Mrs Warwick. They appealed. The council stated to the appeal panel in each case that parents living within the catchment area were guaranteed admission for their child and that the council was obliged to accept all the pupils living within the catchment area because they were guaranteed places. Both sets of parents were unsuccessful at appeal.

#### The Ombudsman's view

8. The Ombudsman said that the point at issue was simple. It was whether the council complied with its duty to give preference to a parental choice in

allocating school places. The Ombudsman did not believe that it did.

9. It seemed to the Ombudsman that the council's admission arrangements were geared solely to constrain school admissions on the basis of geography. It allocated provisional places before parents had the chance to express a preference and guaranteed a place to children on a geographical basis. Instead of allocating places on the basis of the parental choices at the closing date, the council chased up parents who had failed to accept the provisional allocation to ensure that they did so.
10. The Ombudsman said that it was maladministration to give a guarantee on the basis of catchment area. And there was further maladministration in the council failing to operate its published admission arrangements. The council ignored the closing date in order to solicit applications from parents living inside the catchment area.
11. The Ombudsman could see no good reason why the council should not have allocated school places on the basis it advertised to parents. Had it done so, both the complainants would have secured places in the school of their choice for their daughters. So the maladministration caused both girls to lose the places they should have had, and both families were caused considerable upset and had to spend a lot of time and trouble in pursuing their complaint with the council and with the Ombudsman.

12. The council argued that to do other than give a geographical guarantee would penalise children in the remoter parts of the council's area and would force some children to go to schools outside the area. The Ombudsman could not see why a geographical guarantee should be more necessary here than in the area of any other local education authority in a rural district. And furthermore, allocating places according to law and government guidance would not force any child to go outside the authority's area for a school since it would not affect the sufficiency of places available.

#### **Remedy**

13. The Ombudsman recommended that the council should offer places in their preferred schools to both girls and make payments of £500 to each set of parents. The Ombudsman also recommended that the council should review its school admission arrangements to ensure that the maladministration did not recur.

*(Report 00/B/4686 et al)*

## C5: Admissions

### Criteria need to be clear, fair and objective – use of interviews

Mr and Mrs A complained about a school's action in refusing a place for their son, B. The school was a Roman Catholic secondary school and the governors were the admissions authority.

#### Outcome

1. Following the complaint to the Ombudsman, the governors reviewed the application for B and agreed to offer him a place.
2. The Ombudsman considered that action was a fair and satisfactory settlement of the complaint. However, the Ombudsman was concerned about a number of aspects of the admission arrangements and advised the governors to undertake a review.
3. The Ombudsman pointed out that the *Code of practice on school admissions* issued by Parliament advised that admissions criteria should be clear, fair and objective.

#### Objectivity

4. The first criterion in order of priority was for baptised Catholics from practising Catholic families, on the basis of information received from the family and supported by the parish priest, and interviews carried out by the school. The second criterion related to siblings, and the third criterion was similar to the first but in relation to other Christian denominations.
5. The Ombudsman said it would be reasonable that the criteria should specify what objective factors the school would consider as evidence of religious practice. That might vary according to the particular denomination.

#### Fairness

6. The fourth criterion was special medical or social circumstances. The fifth criterion was boys whose families were in sympathy with the Catholic ethos of the school.
7. The Ombudsman said it was not clear what factors would be taken into account in deciding whether the family was in sympathy with the Catholic ethos of the school. But the Ombudsman found that the way that criterion was treated in practice was that families who said they were Catholic but did not meet the first priority criterion were automatically not considered to be in sympathy with the Catholic ethos of the school. The same arrangements applied under the third criterion. It seemed therefore that the school was applying the same standards of religious practice when assessing a particular application under the fifth criterion as it did under the first and third criteria. That seemed to the Ombudsman to be very questionable.
8. The headteacher explained that the fifth criterion covered applications from families who followed and fully practised another faith. That meant that applications from such families had a higher priority than those from families whose religious practice was Christian but not sufficient to satisfy the first or third criterion. The Ombudsman found the way the fifth criterion was written was very misleading.

#### Clarity

9. The Ombudsman said that it was not clear what special circumstances would lead to an application being considered under the social or medical criterion. If

the intention was that only circumstances making it desirable or essential for a child to attend that school rather than another school would lead to acceptance, the criterion should state that.

10. The school had a tie-breaker of distance to distinguish if necessary between applications within any of the five stated criteria. But the arrangements failed to state how any other applications would be considered if the application of the first five criteria did not fill all the available places.

### Interviews

11. The *Code of practice* said that church schools could carry out interviews, but only in order to assess religious commitment.
12. The practice of the school was to interview parents and children. At the interview the headteacher discussed the family's religious practice with parents, and discussed other matters with the child. In this case, B was asked questions about mental arithmetic and Manchester United Football Club.
13. The Ombudsman said that it was possible for parents and children to misinterpret such discussions with the child and they might think, as Mr and Mrs A did, that some other aspect of the child was being assessed, such as intelligence, confidence, behaviour, aptitude or some other quality. The Ombudsman said that the school's interview practice made it difficult for him to conclude that religion was the only thing being assessed in the interviews. The Ombudsman commented:  
  
*"Where a conclusive reference is received from the parish priest and there is no information on an application to cast doubt on the family's religious practice, an interview might add little or nothing to the assessment. If interviews are held unnecessarily it could add to concern that other factors are being introduced into the assessment."*
14. The Ombudsman noted that the interviews took up a great deal of the headteacher's time and suggested that the governors might wish to reconsider the practice of interviewing in the light of his comments.

*(Local settlement 01/B/804)*

## C6: Admissions

### Failure to implement published admission arrangements – criteria – interviews

Mrs A complained about the refusal of a place for her daughter, B, in a Roman Catholic secondary school. The governing body was the admissions authority.

Ombudsman pointed out that the governors were the admissions authority and they were obliged to apply their own published criteria, and not the criteria of the council.

#### Published arrangements

1. The Ombudsman drew attention to the obligation of the governors as admissions authority to implement the admission arrangements and oversubscription criteria which they had published in their brochure for parents. The Ombudsman found a number of ways in which the governors failed to do so.
2. It was stated in the published arrangements that applications received by the end of November would be considered during the autumn term, and the outcome of the applications would be notified to parents by the end of that term. Mrs A submitted her application in time, with all the required documentation. Mrs A did not receive a decision on her application until the beginning of April. The first reason for refusal given by the governors was that B was not one of the applicants given a place in December.
3. The second reason given for refusing the application was that Mrs A had not given the school as her first preference. But the admissions criteria made no provision for the governors to take account of whether the school was or was not a first preference.
4. The admissions criteria gave some priority for children with siblings in the school. B did have a sibling in the school, but the governors gave the application no priority on that account. The governors applied the restriction in the council's published criteria which only gave priority if the sibling would still be in the school at the time of admission. The governors' criteria contained no such restriction. The Ombudsman pointed out that the governors were the admissions authority and they were obliged to apply their own published criteria, and not the criteria of the council.
5. Mrs A believed she would have priority under the criterion for families who were not Roman Catholic but belonged to other denominations and whose application was supported by their minister. Mrs A's application was in fact supported by her minister, but the governors did not give priority under that criterion because the minister made no comment about the family's degree of involvement with the church. The Ombudsman pointed out that the published criterion did not require that. If the governors wished to know about the religious practice of families seeking priority under this criterion, they needed to specify the requirement in their published arrangements. They had not done so.
6. The admissions arrangements made no provision for interviews. The Ombudsman commented that if there were to be interviews, that fact should be mentioned in the published arrangements, together with information on how the governors would assess any information gathered by that means. In this case the headteacher invited Mrs A for a discussion with a senior member of staff, but did not mention what the purpose of the discussion was.

#### Outcome

7. Mrs A's appeal to an independent appeal panel was unsuccessful. The Ombudsman noted that the panel failed to identify the problems which he had found.
8. The governors agreed to offer B a place in the school.

*(Local settlement 01/A/4383)*

## C7: Admissions

### Family moving to council's area – failure of council to make provision

Mrs X complained that a council failed to provide education for her three children of school age when she moved to live in the council's area.

#### Failure to provide

1. The children were without educational provision for more than two years. The council accepted that it was at fault, though it made the point that matters had not been helped by Mrs X's insistence that the children should take up school places close to home.
2. The faults by the council were:
  - Mrs X and her children were housed by the council, but there was no liaison between the housing and education departments, and so the family's educational needs were not identified;
  - Mrs X visited the council offices on two occasions and spoke to staff about the need for education, but those contacts did not lead to any action;
  - a senior education officer did not take sufficiently speedy action when he became aware of the family's needs, and he did not monitor progress on meeting them; and
  - there were failures of liaison between education social workers and the admissions section, with each believing that the other was taking the necessary action.

#### Response by the council

3. Following the complaint to the Ombudsman, the council acted promptly to make arrangements for the two children who were still of school age. They were placed in schools, and transport to and from school was provided. Some additional help was given by a home tutor and the council started an assessment of the children's special educational needs.
4. The council also agreed, at the Ombudsman's suggestion, to provide compensation of £4,000. This was by way of a direct payment of £1,000 to Mrs X and a package of measures to the value of £3,000 to provide further support at home to further the education of the three children.

#### Procedures

5. The council set up a special panel to oversee provision of arrangements for pupils without a school place, either because of exclusion, or because of a recent move into the area.

*(Local settlement 00/A/9572)*

## C8: School reorganisation

### Proposal to transfer school – consultation requirements

The Ombudsman received 35 complaints about a council's proposal to transfer a school to a different site.

The crucial issue for the Ombudsman to consider was whether parents were properly consulted.

#### Consultation requirements

1. Consultation was a statutory requirement. Also the legislation required that the consultation had to take place before a decision was taken to publish a statutory proposal.
2. Some six months before the council's decision to make a statutory proposal to transfer the school to another site, the council announced that it wished to consider making a proposal to close another school and to enlarge the school which was the subject of complaint (school X). Both those proposals were the subject of proper consultation. The council said that it was undertaking site studies about the site to be used for school X. Parents were not given any information about the site studies. It was only two days before the council meeting where a decision was made to propose to transfer school X to the site of the closing school, that parents found out that that was the proposal the council was going to consider. Parents complained there was no opportunity for anyone to consider and respond to that proposal and that this was a failure to consult properly.
3. The question for the Ombudsman was whether parents were properly, fairly and adequately consulted. The Ombudsman took account of guidance given by the Secretary of State and the courts, and said that what was required for proper consultation was at least:

- that parents are told what the proposal is;
  - that parents are given sufficient information to enable them to form a considered view, or given a short summary with an indication of how they can find out more;
  - that parents are told the council's reasons for wishing to consider a proposal;
  - that there is a reasonable period of time for parents to consider the proposal and comment; and
  - that consultation on this basis takes place before the council considers its decision on whether to make a statutory proposal.
4. The Ombudsman said that the council failed to meet those requirements. It could not be said that the consultation was reasonable, fair and adequate.

#### Injustice

5. It was impossible to know what the outcome might have been if there had been no fault. Parents might have hoped that they would have been able to persuade the council not to take the decision it did. They would never know whether that would have been the result and whether they might have been spared the anxiety and the need to pursue complaints to the Ombudsman and objections to the school organisation committee.
6. It was possible that the council would have taken exactly the same decision. But, at the very least, the parents were denied the opportunity of being able to try to persuade the council – on the

basis of full and timely information and a proper statement of the council's reasons, with adequate time for preparing their case – not to decide to make the statutory proposal for transfer. That denial of opportunity was in itself an injustice. Also parents were caused frustration, anxiety and distress; they lost confidence in the council at a particularly crucial time; and they felt that, as parents, they had been marginalised by the council.

#### **Outcome**

7. The Ombudsman considered that the appropriate outcome to the complaints would be that complainants should have a full statement setting out an explanation of why the consultation was inadequate, and that the text of this statement should be made available to the school organisation committee when it considered objections to the proposal.
8. The council agreed to submit the statement in full to the school organisation committee.

*(Local settlement 00/A/12145 et al)*

## C9: Special educational needs

### Child with statutory statement – provision of speech and language therapy not made – duty of council

Mr Fowler and Ms Owen complained that a council unreasonably delayed making provision for their daughter, Sally's, special educational needs.

#### Statutory statement

1. The council issued a statutory statement of special educational needs in respect of Sally when she was aged nine.
2. The statement specified various forms of educational provision for Sally. These included extra teaching and non-teaching support. Those were provided by the council. However, the provision also required speech and language therapy. That was not provided for some two years.

#### Duty of the council

3. A senior council officer said that he believed there was some ambiguity in the *Special educational needs code of practice* issued by the Secretary of State insofar as it concerned responsibility for provision.
4. The Ombudsman said she did not agree there was any ambiguity. The Ombudsman commented:  
*"It seems to me to be quite clear that where this service is not forthcoming from the health authority there is an absolute duty on the council to provide what is specified in the statement."*
5. The health authority had had difficulty in making the provision. Eventually the council did decide to fund private speech therapy for Sally.
6. The Ombudsman said that the delay in making provision was maladministration.

#### Injustice

7. Injustice was difficult to assess. Expert advice from a speech and language therapy specialist made it clear that it was impossible to quantify the effects of the delay. Also, it was not possible to assess the extent to which the council's commitment to the funding of any necessary therapy in the future would rectify any damage.
8. But, the Ombudsman said, it was not safe to assume that there had been no damage or that any damage was negligible. The Ombudsman commented:  
*"If the provision is sufficiently necessary to merit inclusion in the statement, its absence for a prolonged period is likely to cause some harm."*
9. The Ombudsman recognised there was sufficient evidence to suggest that Sally's social development had been adversely affected.

#### Remedy

10. The Ombudsman recommended that the council should pay Mr Fowler and Ms Owen £2,000. The Ombudsman hoped they would use the greater part of that amount for some purpose of direct benefit to Sally, but commented that it was also intended to reflect their own time and trouble in pursuing the complaint.

(Report 00/A/9964)

# C10: Special educational needs

## Child with Asperger's syndrome – school placement

Mr Corrigan complained about the way a council dealt with the education of his son, Robert, who had special educational needs. Robert was diagnosed as having Asperger's syndrome, a form of autism.

### What happened

1. Mr and Mrs Corrigan said that Robert's difficulties began at primary school. He found it difficult to communicate or to form relationships with other children. The primary school was able to give him support from within its own resources, and managed his sometimes difficult behaviour. After he transferred to secondary school, Robert's difficulties increased. He found it difficult to relate to his peers and had little concept of normal social interaction.
2. The Ombudsman accepted that there was no fault by the council during Robert's first two years in secondary school. But the Ombudsman was critical of what happened from that time onwards.
3. Robert was out of school between September 1999 and February 2001, when he started attending part-time at the council's pupil referral unit. He started at an independent school a year later.

### Search for schools

4. During Robert's second year in secondary school, the council undertook a statutory assessment of his special educational needs. Mr and Mrs Corrigan asked for a place in Castle School, which was a school maintained by the council and which provided for delicate or vulnerable children. The headteacher told the council that she was doubtful whether the school was suitable for

Robert, and it was in fact full in the relevant age group. That was on 21 July. But the council did not tell Mr and Mrs Corrigan until 6 September. The Ombudsman said the matter was urgent because the parents wanted to know if Robert could start at the school in September, and because it affected which school would be specified in the statement. The delay amounted to maladministration.

5. Mr and Mrs Corrigan made enquiries about schools outside the borough. They found St John's, an independent boarding school, which had a vacancy and agreed to assess Robert. Mr and Mrs Corrigan withdrew Robert from his mainstream secondary school because of his difficulties there.
6. The Ombudsman accepted that it was proper for the council to await the outcome of St John's School's assessment, which came towards the end of November. But the Ombudsman saw nothing to lead him to conclude that the council was taking action of its own to identify a school which would be suitable for Robert if St John's were not to offer him a place. It was left to Mr and Mrs Corrigan to propose tuition at the pupil referral unit, which they did at the beginning of December. However, Robert did not start there until after half term in February 2000. The Ombudsman concluded that the council's lack of planning for possible alternative schools and tardiness in arranging a place at the unit amounted to maladministration.
7. The council's inaction in searching for suitable schools continued in the year 2000. It was Robert's parents, not the council, who identified other schools which might be suitable. They asked the council to arrange a place at Grange School, another independent boarding school.

8. The Ombudsman commented that, at that time, the council had no ideas of its own for a permanent school placement for Robert except in a mainstream school, and no arrangements had been made for such a placement. The council knew that Robert's special needs were complex, that he had been out of school for some months, and that his parents were very worried. In those circumstances, it was reasonable to expect that the council would have acted with urgency. But it did not. It asked Grange School to make an assessment but it did not ask for that to be done as soon as possible. The Ombudsman concluded that the council acted without sufficient urgency.
9. The Ombudsman was also concerned that there was a delay in securing advice from the social services department. It took over three months for that advice to be obtained.
10. Grange School assessed Robert in June. By then all the places for September 2000 had been allocated and the school could not offer a place until January 2001. The Ombudsman considered that it was likely that Robert would have been able to start at Grange School in September 2000 if the council had acted without fault.

### **The Ombudsman's view**

11. The Ombudsman recognised that Robert was out of school in the autumn term of 1999 because his parents would not allow him to return to his mainstream secondary school, and because Castle School and St John's School could not offer him a place. After that, however, the council's lack of urgency caused Robert to be without a permanent school place for longer than necessary; caused him and his family anxiety; placed too much of the onus to find a place on Mr and Mrs Corrigan; and caused them to be put to a great deal of avoidable time and trouble.
12. The Ombudsman was pleased to note that Robert was happy at Grange School and making good progress there. The Ombudsman recognised that nothing could adequately make up for the family's distress while Robert was out of school. The Ombudsman recommended, however, that the council should pay Mr and Mrs Corrigan £2,000 in recognition of the loss of the full educational provision Robert required and in recognition of the family's avoidable distress; and a further £2,000 in recognition of the costs and time and trouble to which Mr and Mrs Corrigan had been put.

*(Report 00/A/11940)*

# C11: Special educational needs

Child with statutory statement – placement in boarding school – parents move to area of another authority – failure to maintain provision

Mr and Mrs X complained about the way a council dealt with provision for their son, Y.

## Family move

1. The family lived in the area of council A. Y had a statutory statement of special educational needs. He attended a residential school for children with emotional and behavioural difficulties. The school was in the area of council A which financed the placement.
2. The family moved to the area of council B. Council B refused to maintain the placement at the residential school. As a result, Y missed a year of schooling.

## Legal obligations

3. The Ombudsman found that council B did not meet the obligations put upon it by regulations. Council B became responsible for the maintenance of the statutory statement, the making of the special educational provision specified in the statement, and maintaining Y at the school specified in the statement.
4. The regulations also required council B, within six weeks of the family's transfer, to inform the parents that the statement had been transferred and whether it proposed to carry out a new assessment. The *Special educational needs code of practice* indicated that a council could not decline to pay the fees, or otherwise maintain a child at an independent

school named in the statement, unless and until it had formally amended the statement. But here council B refused to maintain the placement, without providing an amended statement.

5. The council did not tell the parents within six weeks whether it proposed to carry out a new assessment. Because the statement was not amended, the parents were deprived of an opportunity to pursue an appeal with the Special Educational Needs Tribunal at an appropriate time.

## Outcome

6. Following the suggestion of the Ombudsman, the council agreed:
  - to pay compensation to the family of £3,500;
  - to provide the family with detailed advice on what further educational training opportunities might be available for Y;
  - to explore the possibility of securing a place for Y at a local college; and
  - to meet any reasonable course and travel costs in respect of a local college place.

(Local settlement 00/B/13590)

## C12: Special educational needs

Speech and language therapy – change of school – therapy withdrawn because of misunderstanding of council’s policy – examination of whether other children were affected

Mr Dale complained that a council failed to ensure that his daughter, Lisa, received the speech and language therapy support specified in the statement of her special educational needs.

### Special needs

1. Lisa had moderate learning difficulties and a problem in understanding spoken language. Her statement of special educational needs specified that she should have a classroom-based speech and language programme and access to speech and language therapy supervision. This was provided up to the end of her first year in secondary school.
2. At that point Lisa changed, at Mr and Mrs Dale’s request, to a different secondary school. At that time the council proposed no amendments to the statement, apart from changing the name of the school. Mr and Mrs Dale assumed that Lisa would continue to receive the speech and language therapy at the new school. They were not advised otherwise.
3. But Lisa received no speech and language therapy at the new school.
4. The council told the family’s MP that speech and language therapy had been omitted from her statement as the therapy had been withdrawn by the NHS trust. The council repeated that statement to the Ombudsman. The council also said that, in accordance with the council’s policy, speech and language therapy was not funded by the council at any mainstream school and responsibility for provision passed to the local health trust.

### Outcome

5. The council accepted that the statements to the MP and the Ombudsman were incorrect and that Lisa missed a year of therapy which should have been provided.
6. Mr Dale expressed the hope that, through his complaint, the council would recognise that it had been at fault, and that action would be taken to ensure that other families would not have to deal with the problems which he and his family had experienced.
7. The council provided new guidance and information for relevant staff; provided additional training; and improved its procedures.
8. The council agreed to pay £1,000 compensation to Mr Dale, taking account of the value of the lost provision and his time and trouble in pursuing the complaint.
9. The council also agreed to check whether any other children had been similarly affected. Following these enquiries, the council was satisfied that no other children were adversely affected.

*(Report 99/C/4727)*

# C13: Transport

## Error by council – withdrawal of free transport – consideration of circumstances at the time

Mrs A complained that a council had withdrawn free transport from home to school for her son, B, and refused to restore it.

### Circumstances

1. At the time of the council's decision, B had been receiving free transport for almost two years. He attended X secondary school. That was his parents' preference when he transferred from primary school, and it was more than three miles from home. That was further than the statutory distance which would normally qualify a child of secondary school age for free transport.
2. But there was a suitable school, school Y, which was nearer to home and within three miles. The original decision to agree free transport was not made in accordance with the council's policy. It could have said at the time that if Mrs A preferred a more distant school she would have to meet the transport costs. At the time Mrs A asked the council whether free transport would be available and was assured it would be.
3. Towards the end of B's second year at the school, the council discovered its error and gave notice that free transport would be withdrawn at the end of the academic year. Following an appeal by Mrs A, that decision was confirmed midway through the summer term.

### The Ombudsman's view

4. The Ombudsman recognised that, generally speaking, it was open to a council to change a decision about free transport if it found that a mistake had been made, provided parents were given an opportunity to make representations and the council properly considered them.

5. But it was necessary to consider the particular circumstances at the time the decision to withdraw free transport entitlement was confirmed. What was relevant in this case was that, at the time of that decision, the council was not actually able to offer a place in Y school. At the time when B was starting at secondary school it would have been reasonable for the council to offer Mrs A a choice – to accept a place in school Y or meet the transport cost to school X herself. But two years later Mrs A was not in a position to choose whether to take up a place in a nearer school, or to pay the transport cost to school X, because there was no place in a nearer school available.
6. The Ombudsman said that, in those particular circumstances, the reasonable approach was to take a new decision, taking account of the current position, and to agree entitlement to free transport.
7. The council reconsidered the position and agreed to grant entitlement for free transport for B until the end of his statutory period of schooling, provided the circumstances remained the same. That is that he continued at X school and the family continued to live at their existing address; and that the position would be reviewed only if those circumstances changed. The council agreed to reimburse the costs Mrs A had paid herself from the start of the academic year to the point when the complaint was settled.
8. The Ombudsman recognised that this was a very positive response by the council.

*(Local settlement 01/A/4820)*

# C14: Transport

School more than three miles from home – refusal of council to meet transport costs – whether place available within three miles – counsel’s opinion on lawfulness of policy – policy unreasonable and unfair

Ms Sledmere complained that a council unreasonably refused to pay in full the transport costs for her daughter, Rosalind, to attend school.

## School preferences

1. Ms Sledmere expressed a preference first for a denominational school, for which the governing body was the admissions authority, and second for a school for which the council was the admissions authority. Both schools were within three miles of her home.
2. She was offered a place at neither school. The council arranged a place for Rosalind at a school seven miles from her home.

## Transport

3. Ms Sledmere asked the council to meet the transport costs for Rosalind to attend the school. The council refused, but agreed to pay a quarter of the cost.
4. Generally councils had an obligation to pay the transport costs of children attending schools more than three miles from their home. But councils did not have a duty to do so if the circumstances were that parents chose to send their child to a school more than three miles away rather than to a school within three miles.
5. The council’s policy stated that:

*“If a place is likely to have been available had a particular school been identified as a first preference, then it will be assumed that places were available.”*

6. The council relied on that policy and said that if Ms Sledmere had placed the council’s school as her first preference rather than the denominational school she would have been allocated a place. The school seven miles away was not the nearest suitable school at which a place was available.

## The Ombudsman’s view

7. The Ombudsman said it was unreasonable of the council to seek to rely on that policy, apart from when a parent expressed a first preference for a school which was more than three miles away. It was never Ms Sledmere’s preference to send Rosalind to a school more than three miles away, and that situation had only come about because she was not given a place in either of the two schools within three miles for which she applied. The Ombudsman said it was manifestly unfair to expect Ms Sledmere to bear the transport costs.
8. The Ombudsman considered that the council’s policy and its application to Ms Sledmere’s case was in conflict with Government guidance and also in conflict with common sense.

## Counsel’s view

9. During the course of the Ombudsman’s investigation, the council sought an opinion from leading counsel on its policy and the application of the policy to Ms Sledmere’s case.
10. Counsel’s advice focused on the timing of the decision over whether to provide free transport and the question of when

arrangements fell to be made for a place in a school within three miles. He said that things had gone wrong in answering that question, not by reference to the arrangements the council in fact made, but by reference to the arrangements it would have made if the parent had applied for the local authority's school as a first preference.

11. Counsel concluded that the council did not make suitable arrangements for Rosalind to attend a school nearer than three miles, and so was under a duty to provide free transport. He said the council's policy was flawed because it focused on arrangements that might have been made, rather than the arrangements which were in fact made.

### Outcome

12. The council accepted that transport provision should have been made for Ms Sledmere's daughter, as it was unable to offer a school place within three miles at the time of entry to secondary education.
13. The council agreed to reimburse Ms Sledmere for the costs she had incurred and provided Rosalind with a bus pass for the future. The council also agreed to pay Ms Sledmere £348 compensation for the time and trouble to which she was put in pursuing her complaint, and for lost interest on the money she had paid.
14. The council also indicated that it would revise its transport policy.

*(Report 00/C/12531)*