

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Leicestershire County Council
(reference number: 19 017 034)**

16 February 2021

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Miss Y	The complainant
W	Her daughter

Report summary

Education & Children's Services – alternative provision

Miss Y complained the Council failed in its duty to provide suitable full-time education to her daughter, W, when they moved to a new house.

Finding

Fault found causing injustice and recommendations made.

Agreed actions

To remedy the injustice identified in this report, the Council will, within one month of the date of this report:

- apologise and pay £7,200 to Miss Y for W's educational benefit. This comprises £600 for each month W remained out of school and without any educational provision. The Council's duty began on 7 January 2019 and ended on 24 February 2020; and
- pay £300 to Miss Y for the avoidable time and trouble caused by the Council's inability to resolve her complaint locally, and for any distress and confusion caused by the incorrect conclusions it reached in its complaint response.

Within three months of the date of this report, the Council will:

- provide us with evidence that it has reminded all Schools and Academies in its area regarding their duties under Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006;
- update us, with evidence, to show the progress made in completing the action plan which it shared with us in September 2020. If all actions have not been completed, the Council will provide an explanation of the status and an anticipated completion date; and
- in addition to the action plan already produced, arrange internal training with its officers in the Admissions/Fair Access Protocol/Children Missing in Education teams to go over the service improvements in the plan. The Council will also use the training to refresh officers' knowledge around the Fair Access Protocol and the requirement to escalate applications without delay if a pupil is off-roll and not receiving any education.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. The complainant, whom we will call Miss Y, says her daughter, whom we will call W, has been out of school since January 2019. She complained the Council has failed in its duty to provide a school place and delayed in arranging suitable alternative provision.
2. Miss Y says this caused injustice to W because she has missed important education which she was entitled to. Miss Y says the Council's failures have affected W both academically and mentally because she lost the opportunity to form new friendships when she moved to a new house.

What we have investigated

3. We have investigated the actions of the Council to establish whether it failed in its duty to provide suitable education for W. We will not investigate the actions of W's previous school for the reasons explained at the end of this report.

Legal and administrative background

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

Applying to change schools

5. Any parent can apply for a place for their child at any time to any school outside the normal admissions round. They can do this by applying directly to admission authorities, or to the council if they coordinate all in-year admissions. (*The School Admissions Code 2014, paragraph 2.21*)
6. The Council's 'Co-ordinated Admission Scheme for Mid-Term Transfers' outlines the process for those wanting to change schools, "Leicestershire LA's [Local Authority] common mid-term co-ordinated admission application form invites those parents resident in Leicestershire wishing to transfer part way through an academic year to name up to three preferred school(s). The preferences parents make must name the schools in ranked order and regardless of whether they are Community, VA, Academy, Studio, Free, Trust or Foundation schools".
7. It goes on to say, "Leicestershire will aim to process all applications within 15 working or school days (depending on school holidays) from the date the application has been received by the LA".

Fair Access in School Admissions

8. The Department for Education issues statutory guidance about school admissions in The School Admissions Code. Admission authorities have a statutory duty to comply with the Code. Where the Code imposes compulsory requirements, or refer to requirements in legislation, they use the words "must" or "must not".
9. The Code says, "Each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round - unplaced children, especially the most vulnerable, are offered

a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority must ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour. The protocol must include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.” (*The School Admissions Code 2014, paragraph 3.9*)

10. For a young person to be considered under the protocol, they will need to fall into one of the categories set out in the council’s own policy.
11. The Council’s Fair Access Protocol (FAP) contains the following key principles.
 - The Council, schools and academies will act together with a sense of urgency to identify a suitable placement.
 - Schools and academies will respond to requests from the Council to admit a person under FAP without delay and normally within seven calendar days.
 - The Council will carefully consider any response before deciding whether to seek a direction from government for the admission of a young person into school.
12. The FAP says, “If an academy has not agreed a start date for the child within 15 calendar days, the local authority can apply for a direction from the Secretary of State via the Education and Skills Funding Agency, who acts on his behalf in these cases. (Where a secondary academy has refused an admission following a decision by the local SEIP [Secondary Education Inclusion Partnership] to allocate a child the LA expects that the academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority and the Chair of the SEIP within 15 calendar days. The LA must not make a direction until the 15 days have passed since the decision to allocate the child to the school has been made by the local SEIP.)”

Children ‘Missing in Education’

13. Councils have a duty to identify, as far as it is possible to do so, children of compulsory school age who are not registered at a school or receiving suitable education otherwise than at school. (*s436A of the Education Act 1996*)
14. All schools must notify their local council when they intend to remove a pupil’s name from their register. The school must only remove a pupil from their register (or ‘roll’) when one of the 15 grounds set out in law are met. It must notify the council of the reason for the removal. (*Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006*)
15. The Department for Education guidance “Children Missing Education Statutory Guidance for Local Authorities” September 2016 states that councils should have robust policies and procedures and to ensure there are, “effective tracking and enquiry systems in place and appoint a named person to whom schools and other agencies can make referrals about children who are missing education”. This is to enable children identified as not receiving education to be promptly returned to full time education, either at school or alternative provision.

How we considered this complaint

16. We produced a draft report after making enquiries of the Council and examining relevant documents, law and guidance. We also discussed the complaint with Miss Y.

17. We gave Miss Y and the Council a confidential draft of this report and invited their comments. We considered any comments received before issuing this final report.

What we found

What happened

18. W was 15 years old and in school year 10 at the time of the matters complained about. She had attended a local school in the neighbouring Leicester City Council area until her family moved to a new house on 5 January 2019 in Leicestershire County Council's ('the Council') area. Before moving to their new house, Miss Y applied directly to some schools seeking a place for W. She also applied to the Council using its 'mid-term application' on 24 October 2018.
19. Despite having applied before her house move, Miss Y did not receive any contact from the Council about the application she submitted. On 14 January 2019 Miss Y emailed the School Admissions department to query the status of W's application. The Council responded to say it needed proof of Miss Y's tenancy so that her application could be processed using the new address. The Council also told Miss Y the school she had applied for ('School A') was already full in W's year group. School A is an academy school. The Council explained that School A could admit pupils over its Published Admission Number (PAN), but only if the pupil had moved into catchment within the past 90 days.
20. Miss Y submitted a copy of her tenancy agreement to the Council on 15 January 2019. The Council notified School A two days later that W was now considered to be within its catchment area and could be admitted over its PAN.
21. The school W had attended in Leicester City Council's area ('School B') removed W from its roll on 18 January 2019. From this point, W was without a school place and therefore missing in education.
22. The Council received notification of W's removal from School B's roll on 30 January 2019.
23. W remained without a school place. So, Miss Y applied to the Council again on 5 February 2019. This time she applied for a different school ('School C'). The Council responded on the same day to advise that School C had already reached its PAN in year 10 and so could not offer a place to W. The Council gave Miss Y the right to appeal the refusal. Miss Y chose not to appeal.
24. Miss Y contacted School A in March 2019 to ask whether she could visit the school with W. The school refused on the basis it remained full in W's year group.
25. Over half of the academic year had now passed. Miss Y contacted the Council's Children Missing in Education (CME) team on 14 April 2019 to seek advice about provision for W. The CME officer spoke to the Admissions team, who agreed to pass W's case to management.
26. The Council's files do not show any progress on W's application between April and August 2019.
27. Miss Y tried to enrol W into a local college on 21 August 2019 to study Maths and English for one day each week. The Council received notification of the enrolment. It called Miss Y to say that W could only enrol onto that course if she was receiving elective home education. Miss Y said she did not intend to home

- educate W. Miss Y also told the Council that School A would not allow a visit due to being over PAN.
28. On 27 September 2019, the Council referred W's application to its 'South Leicestershire Inclusion Partnership' (SLIP) for consideration under the Fair Access Protocol (FAP). W met the Council's FAP criteria because she was in year 11 and had missed more than two months of school.
 29. The Council discussed W's case at the SLIP panel on 11 October 2019. SLIP agreed to visit Miss Y and W at home and to contact School A.
 30. Throughout November, officers in the SLIP contacted School A to pursue a school place for W. The school reiterated that it would not admit W. The Council then suggested a 'managed move' whereby W would attend School A and sit her exams but would not appear on its school roll.
 31. School A agreed to this proposal and confirmed that W could start school on 2 December 2019.
 32. Shortly before W's start date, School A changed its mind. The school contacted Miss Y and the Council to rescind W's offer. School A said it had been informed of a 'serious' incident between W and one of its pupils which happened last year. School A said, "Our student is now settled in Year 11 and doing well. I believe that introducing [W] into our school would be a major safeguarding concern."
 33. W denied the allegation. The Council asked School A for proof of the alleged attack. School A did not corroborate the allegation.
 34. Miss Y complained to the Council on 14 January 2020. The Council did not uphold the complaint, and instead said that Miss Y had refused an offer of a school place.
 35. The Council's FAP panel met on 27 January 2020 to discuss W's application. It nominated School A for W's admission due to her living within catchment. The panel decided:
 - for School A to put W on its roll, in name only, as soon as possible;
 - SLIP will manage W's programme of work, involving school tuition and work experience;
 - SLIP to monitor W's attendance and progress, manage her GCSE examinations and support with post-16 provision;
 - SLIP to visit W in her provision at least once a term;
 - School A to register W for GCSE examinations; and
 - SLIP to arrange examinations to take place at another school site.
 36. The Council contacted School A to relay the panel's decision on 30 January 2020. School A responded on 4 February 2020 and again reiterated its refusal to place W on its roll. The Council referred W's case to a senior officer.
 37. From 24 February 2020, the Council arranged for W to receive 27.5 hours of education a week from two independent providers to study Maths, English, Creative Art, Photography and Sport. W attended until May half-term, at which point the providers temporarily closed due to the national COVID-19 lockdown.
 38. The Council discussed W's case on 28 May 2020. It decided to contact School A again to instruct the admission of W.

39. After a discussion with senior officers, School A offered a place to W on 3 June 2020.

Conclusions

Academisation of schools

40. Not only does this report illustrate how drift and inaction can cause significant personal injustice and long-term disadvantage for a young person like W, it also highlights wider problems which many parents and councils now face following the widespread academisation of schools. Many secondary schools, both in the Council's area and throughout England, are now academy schools. Academies are their own admissions authority, and the Academy Trust is responsible for consulting and determining the school's admission arrangements. Councils have limited powers to ensure the admission of pupils into those schools.
41. Although the Council was not the admission authority for School A, and could not direct the admission of W, it did have the power to contact the government's Education and Skills Funding Agency (ESFA) to pursue a direction on its behalf. The Council did not utilise this power. Instead, W's application for a school place was subject to significant drift.
42. This is an important topical issue because many parents like Miss Y face unnecessary complexity and confusion when trying to secure in-year school places for their children. We recognise the Council is not responsible for the academisation of schools in its area and cannot be found at fault for any complexities in the wider system. However, this case illustrates why it is critical for councils to use the full force of their limited powers to ensure that pupils, like W, do not remain out of school for longer than absolutely necessary.
43. Following our concerns that other families may be affected by delays in the FAP application process, we exercised our powers under Section 26D of the Local Government Act to ask the Council to provide a breakdown showing all FAP applications sent to academy schools in the Council's area since January 2019. We asked the Council to show how many of those applications lapsed the 15 calendar day deadline for the agreement of a start date, and how many have been outright refused. Of those refused, we asked the Council to confirm how many were justified refusals and how many the Council referred to the ESFA.
44. With the exception of one application, which was subject to an ongoing appeal, the information provided by the Council showed that it had progressed all other applications within 15 calendar days. The information did not show any refusals by academy schools. We are therefore satisfied, based on the information seen, that there is no requirement to use our powers under Section 26D of the Local Government Act to request a remedy for other members of the public, who have not complained to us, but may have suffered an injustice.
45. However, the information provided by the Council did not show for all applications the date on which the child formally went onto the school roll. The Council said, "The Council faces some challenges when supplying full data because a number of secondary academies no longer exchange on-roll registration level data with us. It is accepted that this is an issue, and the Council is taking steps to improve particularly in relation to the quality of information returned from Academies."
46. We welcome the Council's proposal to make improvements in this area, which it has included as part of its wider action plan.

Loss of education

47. The Council acknowledges in response to our enquiries that it is responsible for “excessive” and “unacceptable” delay in arranging suitable full-time provision for W at a critical point in her education. We agree with the Council’s conclusions that it failed considerably in its legal duty to provide education for W during year 10 and 11. This caused W significant injustice, with possible long-term consequences arising from her academic disadvantage.
48. The fault identified in W’s case is multiple and shows a concerning lack of coordination between key Council services.
- The Council’s Admissions team delayed in responding to Miss Y’s initial application and failed to give appeal rights when School A refused to admit W because of being over its PAN. The team did not make an alternative school offer, despite W having moved into the Council’s area and being without a school place.
 - The Admissions team failed to promptly identify that W’s application met FAP criteria once she had been out of school for two months and delayed in referring it to the Fair Access Partnership.
 - When eventually accepted under the FAP, the Council did not follow government guidance or its own policy which says the Council will act with a “sense of urgency”.
 - The Council did not consider using its powers to apply for a direction from the Secretary of State via ESFA when School A failed to agree a start date within 15 calendar days. The FAP says, “if the LA do not accept the reasons [for refusal], or no response is received within 15 days, a formal letter directing the academy/school to admit will be issued. The letter will explain the LA’s reasons for rejecting the school’s case.... If the Academy/School does not admit, the LA will consider applying for a direction from the Education and Skills Funding Agency (ESFA) in the case of Academies or the Secretary of State in the case of Schools”.
 - The Council missed an opportunity to ensure that W was placed back on the roll of School B. The Council’s CME guidelines state that, if the previous school’s reasons for ‘off-rolling’ are not appropriate, the CME Coordinator will request for the pupil to be added back on roll. If the matter is not resolved, the case is discussed by senior officers with a possible referral to the ESFA.
 - The Council did not appear to have due regard for its duties under Schedule 1, First Protocol, Article 2 of the Human Rights Act 1998 which says that no person shall be denied the right to education.
49. The Council failed to co-ordinate its services and take timely, appropriate action to ensure W received education which she was entitled to. In line with its published scheme, the Council should have processed W’s application within 15 working days of receipt. As a direct result, W missed almost four whole terms (or 12 months) of education in years 10 and 11.
50. We do not agree with the Council’s conclusion that its duty to make provision for W only began 15 working days after being removed from School B’s roll. This is because it was not feasible for W to continue attending School B after she moved house in January. School B was nine miles away from the family’s new house. If the Council felt this was an appropriate arrangement in the interim period, we would expect the files to show some discussion between the Council and Miss Y

about facilitating W's continued attendance, for example, with the support of school transport. There is no evidence of any such discussions.

51. We therefore find the Council's duty to arrange provision for W began from Monday 7 January 2019 and ended when it offered full-time alternative provision via an independent provider on 24 February 2020.
52. In response to our enquiries, the Council accepted that its fault caused injustice to Miss Y and W and proposed to undertake the following remedial action.
- Immediately remind all schools and academies that exclusion for non-disciplinary reasons is illegal, and that compliance with Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006 is necessary.
 - Prepare a detailed action plan to identify other improvements which the Council needs to make, and to review any changes already made to establish why the Council failed to achieve a positive result for W.
 - Formally apologise to Miss Y and W and pay a total of £6,600 to the family. This is made up of:
 - £400 for each month that W remained out of school because of Council fault. The Council says its Inclusion Team should have picked up W's case within 15 working days of her being 'off-rolled' (2 February 2019) until W received full-time provision (24 February 2020);
 - £200 for each month that W remained in alternative provision (March – May 2020);
 - £500 in recognition of W's inability to form new friendships and the distress this caused; and
 - £300 in recognition of the failed opportunity for the Council to resolve this complaint locally, therefore causing unnecessary time and trouble
53. We welcome the Council's early acceptance of fault and its proposal to remedy the injustice to Miss Y and W. However, we consider the Council should go further in remedying the family's injustice, in line with our published '[Guidance on Remedies](#)', which suggests the following approach:
- "Where fault has resulted in a loss of educational provision, we will usually recommend a remedy payment of between £200 and £600 a month to acknowledge the impact of that loss. The figure should be based on the impact on the child and take account of factors such as:
- the child's Special Educational Needs (SEN);
 - any educational provision – full-time or part-time, without some or all of the specified support – that was made during the period;
 - whether additional provision now can remedy some or all of the loss;
 - whether the period affected was a significant one in a child's school career – for example, the first year of compulsory education, the transfer to secondary school, or the period preparing for public exams."
54. Instead of the remedy proposed by the Council in paragraph 52, we recommended the actions listed in the paragraph below. The Council has agreed to implement these actions.

Agreed actions

55. To remedy the injustice identified in this report, the Council will, within one month of the date of this report:

- apologise and pay £7,200 to Miss Y for W's educational benefit. This comprises of £600 for each month during which W remained out of school and without any educational provision. The Council's duty began on 7 January 2019 and ended on 24 February 2020;
- pay £300 to Miss Y for the avoidable time and trouble caused by the Council's inability to resolve her complaint locally, and for any distress and confusion caused by the incorrect conclusions it reached in its complaint response.

Within three months of the date of this report, the Council will:

- provide us with evidence that it has reminded all Schools and Academies in its area regarding their duties under Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006;
 - update us, with evidence, to show the progress made in completing the action plan which it shared with us in September 2020. If all actions have not been completed, the Council will provide an explanation of the status and an anticipated completion date; and
 - in addition to the action plan already produced, arrange internal training with its officers in the Admissions/Fair Access Protocol/Children Missing in Education teams to go over the service improvements in the plan. The Council will also use the training to refresh officers' knowledge around the Fair Access Protocol and the requirement to escalate applications without delay if a pupil is off-roll and not receiving any education.
56. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Parts of the complaint that we did not investigate

57. Miss Y raises concerns that W's previous school (School B) removed her from roll without having valid grounds to do so, as set out in Regulation 8 of the Education (Pupil Registration) (England) Regulations 2006. We do not have jurisdiction to investigate complaints about schools. Instead we can only consider how the Council acted once it became aware that W was not receiving education. For this reason, we cannot consider Miss Y's complaint that School B wrongly removed W from its roll.

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