

Leicester
City Council

WARDS AFFECTED
All Wards
(City Wide - Corporate Issue)

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

**CABINET
COUNCIL**

**13 OCTOBER 2003
27 NOVEMBER 2003**

**FINDINGS OF MALADMINISTRATION
BY THE LOCAL GOVERNMENT OMBUDSMAN
(OMBUDSMAN REPORT 01/0666/01 & 02/1168/13)**

Report of the Town Clerk and Director of Education & Lifelong Learning

1. Purpose of Report

- 1.1 This report sets out the findings made by the Local Government Ombudsman (LGO) following the investigations into two complaints concerning provision of education for children with special educational needs for the Council's consideration as is required by the Local Government Act 1974.
- 1.2 This report also sets out the remedies that the LGO recommends the Council to implement to provide just satisfaction to the complainants for the findings of maladministration leading to injustice and invites the Council to consider whether it accepts the recommendations.
- 1.3 In accordance with the LGO's practice the names of used within this report are not the real names of the individuals concerned for reasons of confidentiality.

2. Summary

- 2.1 Mr Marshall's son, Lee, has special educational needs. Mr Marshall complained that the Council as Local Education Authority (LEA) failed to make appropriate educational provision for Lee following his permanent exclusion from primary school in October 2000. The Ombudsman concluded that the delay in finalising Lee's statement of special educational needs and in reintegrating him into school was excessive and amounted to maladministration. He considered that the Council did not provide appropriate education in the meantime.
- 2.2 Mr Moore complains that the Council failed to make appropriate educational provision for his daughters, Linzi and Marie, who both have special educational needs after the family moved from another LEA area in July 2001. The Ombudsman concluded that there were similar delays in Mr Moore's case and that the Council did not make suitable educational provision for Linzi and Marie.

2.3 The Ombudsman recommended:

- (a) That the Council, in agreement with the parents, make an investment in the three children's education to the total value of £4750 (subject to the receipt of an appropriate plan) and pay the parent in each case £250 for their time and trouble in pursuing their complaint.
- (b) That the Council reviews the adequacy of the resources of its Student Support Service to satisfy itself that the Service is capable of meeting its statutory duties.

3. Recommendations (or OPTIONS)

3.1 The Cabinet is asked to:

- (a) recommend that the Council accepts the Ombudsman's recommendations, with the investment payment released on receipt from the parents of an appropriate plan of investment dedicated specifically to the education of the children concerned.
- (b) subject to the Council's acceptance of this recommendation, the resulting executive action be taken.

3.2 The Council is asked to accept the Cabinet's recommendation.

4. Headline Financial and legal Implications

4.1 The payments recommended by the LGO will be met from the revenue budget of the Education and Life Long Learning Department

4.2 Under the provisions of the Local Government Act 1974 an investigation report by the LGO which finds maladministration leading to injustice must be placed before the authority within 3 months of receiving the report. The approval of payments under section 92 of the Local Government Act 2000 (payments for maladministration) is a Council function by virtue of paragraph 48 of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (Guy Goodman, Assistant Head of Legal Services - tel 252 7054).

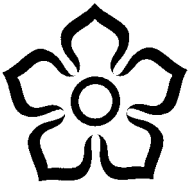
5. Report Author/Officer to contact:

Paul Livock, Service Director (Pupil & Student Support),
Education & Lifelong Learning Department
Tel: 252 7704

Johanne Robbins, Ombudsman Link Officer
Resources, Access & Diversity Department
Tel: 252 7115

DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	No
Executive or Council Decision	Council



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SUPPORTING INFORMATION

1. REPORT

The Ombudsman findings are summarised as follows:

Mr Marshall's Complaint

- 1.1 In December 1998 Lee was referred to the City Council's Education Psychology Service by his primary school because he was displaying delayed development. His case was reviewed in November 1999 as he was making poor progress with learning and social skills. In March 2000 he transferred to Forest Green School and was referred to the Council's Behaviour Support Team (BST). In April 2000 Lee was referred to the Learning and Autism Support Team and the BST arranged funding for a classroom assistant to help him at school.
- 1.2 The LEA carried out an assessment of Lee's special needs on 26 April 2000. A proposed statement for Special Education Needs was issued on 31 August 2000. It was recommended that Lee's needs could be met within a mainstream school. His parents wrote to the LEA on 15 September 2000 stating that Lee had been excluded from Forest Green School for a fixed period but did not indicate whether or not they agreed with the proposed statement.
- 1.3 On 27 September 2000, the LEA contacted the parents to seek their views on Lee's proposed statement. Forest Green School wrote to the LEA on 25 September 2000 to state their concerns about Lee's behavioural difficulties and the level of support the LEA was offering the school to meet his individual needs.

- 1.4 Lee was permanently excluded from Forest Green School on 17 October 2000. This was ratified by the governors on 9 November 2001.
- 1.5 The normal procedure in this Authority for pupils permanently excluded from school is to present the case to the Exclusions and Reintegration Reference Group (ERRG) for consideration and for the development of a reintegration plan.
- 1.6 Lee's case was presented to ERRG on 9 November 2000.
- 1.7 Mr Marshall was seen by Officer G, Service Manager (Admissions and Exclusions) and he was advised of the procedures after exclusion and the options available to him. The family was also interviewed by the Education Welfare Officer on 25 October 2000 and a report provided.
- 1.8 Lee was referred to the Student Support Service (SSS) on 5 December 2000 and provision began on 16 January 2001. The team leader was advised that Lee was an extremely disruptive pupil and to proceed with provision cautiously and incrementally. Despite this, Lee was initially provided with 6 hours per week of educational provision. By September 2001 this provision had been increased to 12 hours per week. More recently, Lee's education provision has been reduced to 9 hours due to the deterioration in his behaviour and while the team awaited advice from the Education Psychology Service. It was believed that the increase in Lee's hours had contributed to his decline in his behaviour.
- 1.9 In line with DfES targets, the SSS was working towards a target of full-time education provision for all pupils, for who it is considered appropriate, by September 2002. The service aims to provide pupils with 15 hours of education provision per week. Although Lee was receiving less, this had been in agreement with Mr Marshall and was due to the fact that Lee had specialised needs which could not be met by the SSS alone.
- 1.10 The casework Officer contacted the parents to invite them to a meeting to discuss future educational provision for Lee. The meeting was held on 30 November 2000, Mr Marshall expressed a preference to seek an alternative mainstream placement for Lee. He named schools to be considered. Two were city schools. One was clearly not identified and further clarification was sought on 7 December 2000. The LEA wrote to parents on 7 December 2000 to confirm that the two schools had been consulted.
- 1.11 Unfortunately, neither school was in a position to offer a place to Lee in view of the numbers on roll, the complexity of Lee's needs and the impact of this on the other pupils in the school.
- 1.12 The Authority consulted a junior school for his admission in September 2001 and 3 MLD units in City schools for a place for Lee during May 2001. Unfortunately, none of the schools consulted felt able to meet Lee's needs.
- 1.13 The Authority finalised Lee's statement on 6 September 2001 to enable the parents the right to appeal. Part 4 identified that Lee's needs could be met by attendance at a mainstream school but that interim support would be provided by the SSS.

- 1.14 A letter was received on 27 August 2001 from the parents' solicitor asking the LEA to carry out a re-assessment of Lee's Special Education Needs. The LEA agreed to carry out a re-assessment on 21 September 2001. Advice was collected from his previous school, the SSS, Educational Psychology and Health (including Speech and Language Therapy). This indicated that Lee's needs would be best met in a more specialised environment.
- 1.15 A draft statement had been prepared and should have been issued before the date of 25 January 2002 (18 weeks). A place was likely to be sought for Lee at a school which caters for pupils with learning difficulties and had a specialist autism provision on site. Parents were asked to express their preference.
- 1.16 The LEA was confident that an admission date could have been arranged subject to agreement with the parents. The parents had in the past expressed a preference for this particular school.

Mr. Moore's Complaint

- 1.17 In June 2001 Mr. Moore and his family moved to Leicester from the area of another LEA. Two of Mr. Moore's five children were found school places without difficulty.
- 1.18 Draft amended statements were issued on both Linzi and Marie on 5 April 2002, naming Hawthorn School. The parents did not respond. However it is understood, from previous contact with the parents that Hawthorn School was the parental preference for Linzi and Marie. The LEA was exploring with Hawthorn School an integration strategy for the two girls. A strategy meeting was planned for 23 May 2002 between the LEA services involved with the pupils and the school. The outcome of the meeting was a detailed integration plan for Linzi and Marie. The Authority wrote to the parents again asking them to confirm this by returning their parental preference forms as soon as possible. In view of the sensitivity of the case, the Authority wanted to ensure that the parents had every opportunity to respond to the draft statement before issuing a final statement. If no response was received the Authority were going to finalise the statement, thus allowing them their right of appeal.
- 1.19 The Authority felt unable to pursue a place at Hawthorn School or any other mainstream School, when the parents first requested mainstream provision on their arrival in Leicester, as the paper work received from the previous Authority was out of date. It outlined that both pupils were attending Pupil Referral Unit (PRU) and gave no evidence to support the Parent's claim that reintegration into a mainstream school had begun.
- 1.20 The authority made the decision that, as both Linzi and Marie had been attending off-site provision in their previous Authority, it was deemed appropriate to refer them to the Student Support Service (SSS), while a more appropriate placement was identified.
- 1.21 The Authority decided, therefore to make educational provision at the Student Support Unit (SSU) while further work was undertaken with the pupils. The SSU endeavors to provide appropriate individualised education for its pupils giving due regard to the National Curriculum.

- 1.22 Tuition at the SSU Linzi and Marie started on 12 November 2001 following a telephone referral to the service on 7 November 2001. The referral paperwork was received by the SSU team on 21 November 2001. The SSU Education Team provided Linzi and Marie with an education programme, while attempts were made to identify suitable educational placements. A pre-allocation assessment for both Linzi and Marie was undertaken and these plans formed the basis of the programme of work. The quality and content of this education provision has been monitored using Individual Education Plans (IEPs). The SSU has endeavored to achieve a balance between the need to provide opportunities for the girls to work within a group setting and the suitability of the education programme. A significant proportion of their time was spent working on a one to one individualised programme,
- 1.23 A prospectus was sent to the Education Advice Worker at his request, and was enclosed with a letter from Officer E Deputy Head of Student Support Service (SSS) dated 15 February 2002. Although the SSU is not was not at the time, a designated Pupil Referral Unit (PRU) it endeavored to provide individualised education for its pupils giving due regard to the National Curriculum.
- 1.24 Linzi and Marie received 13 hours direct tuition per week, comprising of group and individual work. Additional work was provided for them to complete at home. Parental preference for Linzi and Marie when they arrived in the City was Hawthorn. Hawthorn and three other schools were consulted, but none of the schools felt able to meet the needs of Linzi and Marie despite the LEA offering additional resources and on-going support from the LEA's SEN support services.
- 1.25 Hawthorn School had a new head and it was felt by the standards Inspector to be very fragile, potentially being placed in special measures or serious weaknesses if inspected at that time. The school had a number of pupils displaying significant behaviour problems. Linzi and Marie were referred to the SS to provide interim education and to enable the LEA to carry out further assessment of Linzi and Marie's special educational needs.
- 1.26 The Annual Review Meeting on 21 February 2002 considered the advice from the Educational Psychologist and tutor from the SSU, together with the parents' views and decided to recommend that a mainstream placement be explored. This decision was affirmed by the Authority's SEN Management Reference Group on 27 February 2002.
- 1.27 The LEA was exploring with Hawthorn, an integration strategy for the two girls. A strategy meeting was planned for 23 May 2002 between the LEA services involved and the school.
- 1.28 The outcome of the meeting was detailed in an integration plan for Linzi and Mari. As Linzi was a year 6 pupil, consultation was continuing with Trent Community College, where a place was allocated for her from September 2002. However, the Moores subsequently left the area.

The Ombudsman's Findings

- 1.29 The Ombudsman concluded that:

“The Council initiated a statutory assessment of Lee’s special educational need on 26 April 2000. In accordance with the time limits the final statement should have been issued by the middle of September 2000. This did not happen until 6 July 2001 and was the first opportunity for the parents to appeal. As early as November 2000 the Council acknowledged that it was important to keep Lee’s time out of school to a minimum and government guidance requires councils to ensure that excluded pupils are re-integrated as quickly as possible – ideally within one term. While I understand the difficulties that the Council faced trying to find a suitable placement, the delay was excessive and amounts to maladministration.

- 1.30 The Council did not make any provision for Lee in respect of his general education or his special educational needs in the period between his exclusion from Forest Green School. Being confirmed on 9 November 2000 and 16 January 2001 when provision began at the Student Support Unit (SSU). So he received no education for around half a term following exclusion. This is contrary to the Council’s statutory obligations and to central government guidance and is maladministration.
- 1.31 The Council had similar difficulties in arranging suitable placements for Linzi and Mari Moore. It approached four mainstream schools but none was prepared to accept either child. While there was clearly some disagreement between the Council and the schools as to whether mainstream placements were suitable, the Council had received the statements from the previous LEA in July 2001 and did not review them until February 2002. The Council accepts that it should have finalised the statements but it did not. This delay was maladministration.
- 1.32 Provision started at four hours per week and increased to 12 hours per week for the next two terms. This was half the amount that the Council was required to provide by September 2002 and I conclude that this was maladministration”.
- 1.33 Linzi’s and Marie’s injustices resides in their receiving poorer educational provision than that to which they were entitled for a period of two and a half terms.
- 1.34 Accordingly the Ombudsman’s recommends:
- (c) That the Council, in agreement with the parents, make an investment in the three children’s education to the total value of £4750 (subject to the receipt of an appropriate plan) and pay the parent in each case £250 for their time and trouble in pursuing their complaint. (£250 per family)
 - (d) That the Council reviews the adequacy of the resources of its Student Support Service to satisfy itself that the Service is capable of meeting its statutory duties.

2 THE COUNCIL’S RESPONSE

- 2.1 The Education Department has stressed to the Ombudsman, the difficulty in negotiating with schools the admission pupils with a history of behavioural and other difficulties. Headteachers are required to consider such requests in the context of the delivery of efficient education to the other pupils in their charge and must also take into account the views of parents and governors of their schools.

- 2.2 In the case of all three children, four schools were approached in succession but all unwilling to consider being named in Part 4 of the Statement of Special Educational Needs, despite the offer of substantial additional resources. In the case of all three pupils, the Department was reluctant to jeopardise the sensitive relationship between the school and the induction of a new pupil by naming in Part 4 of the Statement a school that has expressed clear reluctance to admitting them. The authority had taken the view that by, effectively, *forcing* the school to admit such a pupil, it would lose the confidence of both teachers and parents in the school's ability to undertake the sensitive and detailed work necessary to make the provision for difficult pupils.
- 2.3 Following the outcome of these two cases, the Authority has now, reluctantly, revised its procedures to name formally a particular school in Part 4 and to use the force of law to secure admission to the school for the young person(s) concerned. This may well engender objections from Heads and school governors and will place an increased burden upon the LEA's specialist services in supporting receiving schools where there has been resistance to such admissions.
- 2.3 In respect of providing educational support while pupils are out of school, the Authority notes that the statutory requirement to provide 25 hours per week began in September 2002. Up until that time, Leicester City Council - as with many other Authorities - provided services ranging from 5-15 hours per week, depending on the needs of students.
- 2.4 In the case of Lee, the Student Support Service needed to be augmented by a peripatetic teacher with experience of working with children with autism. The recruitment of such a teacher in competition with schools offering full-time posts was difficult and despite the best efforts of its officers, the LEA was unable to secure this specialist input as quickly as it would have wished.
- 2.5 The LEA had made preparations for growth to bring the service up to statutory level for the projected number of pupils for which it was required to make provision by September 2002. Before this date, there was no formal requirement to provide 25 hours of tuition.
- 2.5 The Authority, therefore, does not take the view that because provision was "short of this target" in 2001, it had maladministered.
- 2.6 However, the Authority accepts that in both cases, the legal facility to name a receiving school could have been used and, in view of the vulnerability that these cases have highlighted, has altered its practice accordingly.
- 2.7 The ability of the Student Support Service to fulfil statutory requirements is already kept under regular review. The numbers of exclusions within the City has required a further growth bid in order to ensure that the Authority meets its statutory responsibilities
- 2.8 Having clarified with the Office of the Ombudsman, the wording of the recommendation, it is recommended that members agree to release the payment on receipt from the parents, of an appropriate plan of investment dedicated specifically to the education of the children concerned.

3 FINANCIAL, LEGAL AND OTHER IMPLICATIONS

3.1 FINANCIAL IMPLICATIONS

These are dealt with in paragraph 4.1 of the Report.

3.2 Legal Implications

These are dealt with in paragraph 4.2 of the Report.

3.3 Other Implications

OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References within report
Equal Opportunities	YES	Para 4 – Corporate approach to specific needs of applicants.
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	

4 BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

4.1 Local Government Act 1974 (Section 30), press announcements have been made and copies of the report have been made for public inspection at the Customer Services Centre

4.2 Copies of the full report are available from the Ombudsman Link Officer, Resources, Access & Diversity, Ext 7115

5 CONSULTATIONS

5.1 This report has been produced in consultation with the Education & Lifelong Learning Department and the Legal Services Section in Resources, Access & Diversity Department

6 REPORT AUTHOR

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