

Local Government
OMBUDSMAN

Report

on an investigation into
complaint no 11 003 563 against
the London Oratory School

15 March 2012

Millbank Tower, Millbank, London SW1P 4QP

Investigation into complaint no 11 003 563 against the London Oratory School

Table of Contents	Page
Report summary	1
Introduction	3
Legal and administrative background	4
Investigation	4
Conclusion	5
Injustice	10
Recommendations	10

Key to names used

- Mr and Mrs Y – the complainants
- Child Y – their son
- Ms K – the complainants' solicitor

The law generally requires me to report without naming or identifying the complainants or other individuals. The names used in this report are therefore not the real names of the people involved.

Report summary

Education: School Admissions

Mr and Mrs Y applied for a place for their son at the London Oratory School (the School). Their application was declined and they appealed that decision. The appeal was also unsuccessful and Mr and Mrs Y complained to the Ombudsman through Ms K about the way that the Independent Appeal Panel (the Panel) dealt with their appeal.

The investigation revealed that the complainants had not received the School's case before the hearing and that the Panel had made a procedural error in the way it had applied the two-stage balancing test when deciding whether to uphold the appeal. The Panel had based its decision on the fact that Child Y did not meet the faith criteria rather than considering the appeal on its merits in terms of the prejudice that could be caused to the School.

Additionally, fault was identified in the following areas:

- The complainants were not told the names of the Panel members until two days before the hearing.
- The School failed to arrange a translator for the complainants on the day of the hearing.
- The School failed to respond to at least one request for information made by the complainants.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommends that the school should hold a new appeal hearing with a new panel. In addition, the Ombudsman recommends that the School revise the training provided to panel members to prevent the same errors occurring in the future.

Introduction

1. Mrs and Mrs Y complained that there was administrative fault in the way the Independent Appeal Panel (the Panel) considered their appeal against the Governors' decision to refuse to admit their son, Child Y, to the School. In summary:
 - a. They did not receive any information about the admission authority's case before the hearing as required by paragraphs 2.20 and 2.21 of the School Admission Appeals Code 2009 (the Code).
 - b. They were unable to contact the Clerk independently from the School. They said that the Clerk's contact details were the same as those for the School which they believed indicated that the Clerk was not independent in terms of paragraph 1.2 of the Code;
 - c. They were not told the names of the Panel members until they called the School two days before the hearing in contravention of paragraph 2.12(a) of the Code;
 - d. Ms K, the complainant's solicitor, wrote to the Clerk at the School approximately three weeks before the hearing requesting certain information. However, she said that she never received a response to this request. The complainants said that the presenting officer, when questioned at the hearing, acknowledged that the School had received the request but had not responded as required by paragraph 2.12(b) of the Code;
 - e. Ms K wrote to the Clerk on 23 April 2011 advising that her clients would require an interpreter at the hearing. However, Mr and Mrs Y said that none was provided and the failure to do so amounted to a breach of paragraph 2.13 of the Code;
 - f. The Panel did not receive a complete bundle of papers to support the appellants' case. Ms K explained that she sent an updated copy of the papers to the Clerk on 26 April 2011 but it was unclear whether the Panel received this bundle;
 - g. The Panel indicated that they intended to visit the School in contravention of paragraph 2.20(b) of the Code;
 - h. The decision letter following the appeal indicated that the complainant's appeal was unsuccessful on the basis that the admissions criteria were correctly applied and that Child Y was not a practising Roman Catholic. The complainants therefore believed that the Panel had not carried out the two-stage process for considering appeals in paragraph 3.1 of the Code. The second stage of the process, as described in paragraph 3.6 says that

the panel must consider whether the appellant's grounds for the child to be admitted outweigh any prejudice to the school;

- i. The presenting officer for the school made inappropriate comments during the appeal and the Chair had therefore failed in his responsibility under paragraphs 1.18 and 1.18(e) of the Code; and
- j. The Chair asked them irrelevant questions, for example, how long they had been living in the United Kingdom.

Legal and administrative background

2. Actions taken by the Ombudsman and her officers are governed by the Local Government Act 1974. The Act allows the Ombudsman to investigate complaints of administrative fault ('maladministration') and/or service failure brought by or on behalf of individuals who claim to have suffered injustice. The Ombudsman will consider whether the School has acted reasonably, in accordance with the law, its own policies and accepted standards of local administration. Where there is evidence of maladministration, the Ombudsman considers whether any injustice has arisen and any appropriate remedy for that injustice.

3. The Act says that:

"It is hereby declared that nothing in this Part of this Act authorises or requires a Local Commissioner [an Ombudsman] to question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority."

This means an Ombudsman cannot challenge the merits of a decision taken by an admissions authority or an appeal panel in the absence of evidence of administrative fault.

4. The actions of the Governors and Panel should be in accordance with the School Standards and Framework Act 1998, the Education Act 2002 and the Code.

Investigation

5. On 2 March 2011 the School wrote to Mr and Mrs Y advising that their application for a place in September 2011 for Child Y had been unsuccessful. The letter explained that the School's admission criteria gave priority to practising catholic applicants and, as it was heavily oversubscribed by Roman Catholic applicants, the application has been refused on the basis that Child Y was not a practising catholic. The letter also gave instructions about how applicants could appeal the admission decision.

6. Mr and Mrs Y contacted the School and requested the standard appeal forms. The School replied with the form on 10 March 2011 advising that it needed to be

returned by 21 March 2011 and appeals would not be considered until May 2011. Ms K sent the completed form in under cover of a letter dated 18 March 2011.

7. On 14 April 2011, Ms K wrote to the Clerk to the Governors asking that he provide information relating to the admission criteria. This letter also indicated that a previous request had been made for other information about the School.
8. On 15 April 2011, the School wrote to Mr and Mrs Y with information about the appeal hearing asking the appellants to confirm whether they would be attending. Ms K wrote to the Clerk on 23 April 2011 confirming that Mr and Mrs Y would be attending the appeal. That letter included the statement;

‘Please note that [Mr and Mrs Y] will require [an] interpreter at the hearing.’
9. The appeal hearing took place on 5 May 2011 and the decision was communicated to Mr and Mrs Y on 23 May 2011. The appeal was unsuccessful.
10. On 6 June 2011, Ms K wrote to the Ombudsman raising concerns about the appeal process. One of my investigators made written enquiries of the School on 28 June 2011 and the School provided its response on 25 July 2011.
11. On 5 August 2011, my investigator wrote to the School with her provisional view that there had been several examples of administrative fault in the way in which the hearing had been conducted. The investigator suggested that these faults could be remedied in part by arranging an immediate appeal rehearing.
12. In response to this proposal the head teacher asked that the investigator revise her provisional view on the basis that the request for an interpreter was unclear and that the School could not have reasonably provided the information asked of it. The head teacher asked that my investigator contact him to discuss the matter before forming a final view on the matter.
13. My investigator discussed the matter with the head teacher by telephone on 11 November 2011. He explained that he disagreed with several aspects of the provisional view and was therefore not prepared to arrange a rehearing at that stage.

Conclusion

Complaint a) The complainants did not receive any information about the admission authority’s case before the hearing as required by paragraphs 2.20 and 2.21 of the School Admission Appeals Code 2009 (the Code).

14. I have reviewed the Clerk’s notes of the hearing which demonstrate that the complainants raised this issue at the beginning of the appeal. Extensive questioning of the presenting officer and the admission authority’s case followed.

The complainants argued that the School's failure to provide evidence indicated that it could not prove its prejudice case.

15. In its response to my enquiry letter, the School did not address this specific point but rather referred to the multiple information requests that the complainants had made to the School prior to the hearing. However, the admission authority's case is information that **must** be provided in order to satisfy the Code, not information that must be requested by the appellants. The School has neither confirmed nor denied whether the case was given to the appellants before the hearing. Therefore, there is no evidence indicating that paragraph 2.20 of the Code was satisfied and it would appear that the admission authority's case was not provided to the appellants. It should have been.

Complaint b) The complainants were unable to contact the Clerk independently from the School. They said that the Clerk's contact details were the same as those for the School which they believed indicated that the Clerk was not independent in terms of paragraph 1.2 of the Code.

16. The complainants were concerned that the Clerk did not have separate contact details. In response to my enquiries, the School explained that the Clerk works from home and wishes to avoid contact outside working hours. The School also said that the Clerk has contacted appellants and their representatives when requested to do so and the School forwards the Clerk's post to his private address.
17. I do not consider this explanation unreasonable. The Code says that the Clerk must be independent of the School but does not give specific guidance around how the Clerk should be contacted. In the absence of evidence that the School interferes with the Clerk's work, I am unable to conclude that the Clerk's use of the School address and telephone number indicates that he was not independent of the School. The arrangement that the School describes is administrative and does not in itself, in my view, compromise the Clerk's independence.

Complaint c) The complainants were not told the names of the Panel members until they called the School two days before the hearing in contravention of paragraph 2.12(a) of the Code.

18. The School, in response to my enquiry letter, has not addressed this point and in the absence of evidence to the contrary I therefore accept the complainant's assertion that the School did not provide the names of the Panel members three days before the hearing, as required by the Code.

Complaint d) Ms K wrote to the Clerk at the School approximately three weeks before the hearing requesting certain information. However, she said that she never received a response to this request. When questioned at the hearing, the complainants said that the presenting officer acknowledged that the School had received the request but had not responded as required by paragraph 2.12(b) of the Code.

19. The School explained that it had recently hired a new secretary and was dealing with a high volume of correspondence. It said that it would have therefore been difficult to respond to all requests for information, especially in this case where the requests were many and extensive.
20. I appreciate that appeals season is a busy time administratively for admission authorities. However, the Code is clear in that paragraph 2.12(b) says that the admission authority must provide all information reasonably asked of it. If the School considered any of the requests unreasonable it would have been entitled to ask the complainants to refine those requests. However, I consider that the requests should have been acknowledged at the very least even if the School considered the provision of information inappropriate. The apparent failure to acknowledge the request, in my view, is evidence of a failure to comply with this requirement of the Code.

Complaint e) Ms K wrote to the Clerk on 23 April 2011 advising that her clients would require an interpreter at the hearing. However, they said that none was provided and the failure to do so amounted to a breach of paragraph 2.13 of the Code.

21. I have reviewed the letter of 23 April 2011 in which the complainants, through their solicitor, request an interpreter. The relevant sentence reads:

‘Please note that [the complainants] will require [an] interpreter at the hearing.’

22. The School said that this request was unclear when read in the context of all the other documentation provided. Therefore, the Governors were not aware that the complainants were expecting them to provide an interpreter.
23. I do not consider that the request is unclear. The words ‘require an interpreter’ indicate to me that the complainants have a requirement and the Code is clear that the admission authority must arrange this. However, the School explained that it offered to postpone the hearing in order to provide a translator but the complainants refused this offer.
24. The School was on notice of the request when it received the letter of 23 April 2011 and it is unfortunate that the request was not acted upon at that time. However, I consider that the subsequent actions taken, in offering to postpone the hearing and locate a translator, were reasonable in the circumstances.

Complaint f) The Panel did not receive a complete bundle of papers to support their case. Ms K explained that she sent an updated copy of the papers to the Clerk on 26 April 2011 but it is unclear whether the Panel received this bundle.

25. The complainants said, in their initial complaint letter to this office, that their solicitor telephoned the School on 5 May 2011 and was told that the School had received their bundle and forwarded it to the Clerk. I requested that the School provide me with a copy of the appellants' case in my initial enquiry letter. The bundle that has been provided to me by the School is paginated and runs to 128 pages, the same number as the bundle that the complainants provided with their initial complaint. The School has confirmed that the updated bundle was received and forwarded to the Panel.
26. The complainants have said that the barrister who represented them at the hearing thought that the Panel had not received the updated bundle. However, no further, specific detail has been given about why the complainants hold this view. Given the evidence indicating that the bundle was received and the lack of detail around why the complainants believe that it was not, on the basis of the evidence I have seen, I am unable to conclude with any degree of certainty that the Panel did not have the updated bundle at the hearing.

Complaint g) The Panel indicated that they intended to visit the School in contravention of paragraph 2.20(b) of the Code.

27. I appreciate the point the complainants make in relation to the comment made by the Chair and confirmed by the School that the Panel did intend to conduct a tour of the School. However, the School has confirmed that the tour did not go ahead, therefore, there has been no breach of the Code in this regard.

Complaint h) The decision letter following the appeal indicated that the complainant's appeal was unsuccessful on the basis that the admissions criteria were correctly applied and that Child Y was not a practising Roman Catholic. The complainants therefore believed that the School had not carried out the two-stage process for considering appeals in paragraph 3.1 of the Code. The second stage of the process, as described in paragraph 3.6 says that the panel must consider whether the appellant's grounds for the child to be admitted outweigh any prejudice to the school.

28. I have reviewed the decision letter and the Clerk's notes of the Panel's deliberations. I am concerned at the comments by the Panel about overturning the admission authority's initial decision. The purpose of the appeals process is to give the Panel an opportunity to consider whether the appellants' reasons for wanting a place at the School outweigh the School's prejudice case. Although the first stage of the appeal involves consideration of the admissions criteria, the second stage relates to whether the strength of the appellants' case outweighs the School's prejudice case. Having reviewed the Clerk's notes and the decision letter it is unclear whether the Panel applied this test correctly.
29. The School suggested that this fault could be remedied by reissuing the decision letter. However, in my view the issue is more significant than merely the way in which the decision was communicated.

30. I have reviewed the Clerk's notes of the Panel's deliberation and, whilst it is clear that the Panel heard the appellants' reasons for wanting a place at the School, I am concerned about how the Panel carried out its subsequent deliberations. The first line of the Panel's deliberations says:

'[one of the lay members] felt that clearly the problem in this case was simply that the family were not Roman Catholic and the School had been heavily oversubscribed with Roman Catholic applicants and therefore quite simply [Child Y] had not been offered a place.'

The Panel then went on to comment that:

'...but ultimately a line must be drawn somewhere, and it would not be right to uphold an appeal for a non catholic child at the expense of the some (sic) very strong cases of appeal we have seen from catholic families....'

31. On the basis of the Clerk's notes, I do not consider that the Panel considered the appellants reasons for wanting a place at the School independently of the stage one test of whether the admission criteria were correctly applied.

Complaints i) and j) The presenting officer for the school made inappropriate comments during the appeal and the Chair had therefore failed in his responsibility under paragraphs 1.18 and 1.18(e) of the Code and that the Chair asked them irrelevant questions, for example, how long they had been living in the United Kingdom.

32. I have reviewed the Clerk's notes of the appeal in considering whether there is evidence to substantiate these complaints. In doing so, I have seen no evidence that the presenting officer for the School made inappropriate comments or that the Chair failed to conduct the appeal appropriately. In relation to the questions the Chair asked, I would be reluctant to criticise any question posed unless it was in breach of the Code, for example, where the Chair expressed a personal opinion or could be seen as making a case for the School. The reason for this is that the Panel needs to be free to obtain the information necessary to make a decision on the appeal.
33. It is important to note that the Clerk's notes do not need to be verbatim; under 2.39 of the Code the Panel has to be able to show, if challenged, that it has properly considered all the material factors in coming to its decision. Here the record made by the Clerk is important; this should record the Panel's reasons for each decision and the notes should be sufficient to allow an external body to scrutinise the hearing and to understand how a decision has been reached. I consider the Clerk's notes in this case are comprehensive and can see no evidence that the Chair acted inappropriately.
34. I have seen no evidence that the questions asked were in contravention of the Code or that the Chair failed to control the hearing fairly.

Injustice

35. The faults identified, in paragraphs 15, 18, 20 and 31 above, are maladministration causing injustice. The complainants cannot now be satisfied that their appeal was considered properly and fairly.

Recommendations

36. To remedy this injustice, the Ombudsman recommends that the School should hold a new appeal hearing with a new panel. In addition, the Ombudsman recommends that the School revise the training provided to panel members to prevent the same errors occurring in the future by making them aware of the statutory procedure and making it clear that each case must be considered on its merits and outside the admissions criteria.

**Dr Jane Martin
Local Government Ombudsman
10th Floor
Millbank Tower
Millbank
London SW1P 4QP**

15 March 2012