

Local Government OMBUDSMAN

Report

on an investigation into
complaint no 12 005 054 against
the Latymer School, Enfield

15 October 2012

Millbank Tower, Millbank, London SW1P 4QP

Investigation into complaint no 12 005 054 against the Latymer School, Enfield

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Key to names used

The complainant	the father of the child at the centre of the complaint
Child A	the complainant's son

The law generally requires me to report without naming or identifying the complainant or other individuals. The name used in this report is therefore not the real name of the person involved.

Report summary

School admissions

The Latymer School refused to admit Child A to its sixth form because of an incident of poor behaviour in the previous school year which resulted in a temporary exclusion. The School says admission to its sixth form from year 11 is dependent on good behaviour. The law prohibits the School from selecting sixth form pupils based on their behaviour records. As Child A had satisfied the academic requirements to join the sixth form, he should have been admitted.

Finding

Maladministration causing injustice

Recommended remedy

The Ombudsman recommends the Latymer School admits Child A to its sixth form immediately. The Ombudsman also recommends that the Latymer School revises its published admission arrangements for its sixth form to comply with the new code on admissions.

Introduction

1. The complainant complains to the Ombudsman that the Latymer School in the London Borough of Enfield unlawfully withdrew an offer for a place at its sixth form his son from September 2012.
2. He also says the School failed to provide recourse to an education appeal panel within the statutory timeframe contained in the *School Admissions Appeal Code*.

Legal and administrative background

The Ombudsman

3. The *Local Government Act 1974* gives the Ombudsman power to investigate complaints of injustice caused by administrative fault, service failure, or failure to provide a service. This means that one of these faults must be present or reasonably suspected and there must be a direct, causal link between this and an injustice.
4. The Ombudsman will examine the administrative actions of a body in her jurisdiction by comparing its actions against its statutory responsibilities, the requirements of its own policies and procedures, and with generally accepted standards of administrative practice.

School admissions

5. The Governing Body of the Latymer School is responsible for arranging admissions to the school, and for allocating places if it is oversubscribed. It was bound by the mandatory provisions of the statutory guidance, *School Admissions Code 2010* (the Code), when determining admissions to its sixth form for September 2012.
6. The Code denotes mandatory obligations by placing bold emphasis on '**must**' and '**must not**'.
7. Section 2.1 of the Code says:

*'... all maintained schools ... that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any criteria.'*
8. Section 1.44 of the Code says:

*'It is not necessary for children already in the school to apply formally for places in Year 12 [the first school year of sixth form education], but the admission arrangements **must** give details of any entry requirements (such as minimum entry qualifications, which can include a level of attainment at GCSE and **must** be the same as the criteria for external applicants).*

...

*Entry **must not** be dependent on attendance, behaviour record, or perceptions of attitude or motivation.'*

9. Section 1.24 of the code says:

*'A child **must not** be refused admission to a school on the grounds of prejudice to efficient education or the efficient use of resources except where the number of applications for admission exceeds the admission number.'*

10. Sections 1.35 and 1.36 of the Code says:

*'If a school is oversubscribed then the admission authority must consider all applicants against its published oversubscription criteria. A decision to refuse admission **must not** be made by one individual in an admission authority.'*

*'Where the school is its own admission authority the whole governing body, or an admissions committee established by the governing body, **must** make such decisions'*

11. Finally Section 1.71(b) says:

*'Admission authorities and governing bodies **must not** make subjective decisions or use subjective criteria'*

Investigation

12. One of my Investigators has considered the complainant's written submission to this office. He made formal enquiries of the school and considered its response. He considered its policy for admission to its sixth form in conjunction with what he felt was the relevant statutory guidance, the *School Admissions Code 2010*.
13. The School responded to say the relevant guidance should be the latest School Admission Code which came into force on 1 February 2012. The Investigator sought clarification from the Department of Education on this point. It confirmed the admission arrangements for the September 2012 intake would have been set and determined using the 2010 edition of the Code.

Key facts

14. The School is a voluntary aided school situated in the London Borough of Enfield. It selects pupils based on their academic ability and has an onsite sixth form for pupils wishing to pursue post-16 education.
15. In September 2011 Child A was 15 years of age. He attended the School as a year 11 pupil in his final year of GCSEs. On 26 April 2012 the School's Headteacher sent the Complainant a letter which explained the School was excluding his son for a fixed period owing to a breach of its behaviour policy. The letter said that his son had not met the requirements to join the sixth form and so would have to continue his education elsewhere.
16. The Complainant asked for some more information about this. On 17 May 2012 the Headteacher explained that progression to the school's sixth form was not automatic. He quoted from a letter sent to parents of all year 11 pupils earlier that academic year. The letter said that entrance to the school's sixth form is dependent on fulfilling its '*admissions criteria*' which say pupils should:

- have the necessary GCSE background;
 - have a real interest in the subject;
 - be involved in and enjoy the support to the school community;
 - have a record of meeting the speciality subjects' requirements and coursework deadlines; and
 - be evidently self-disciplined (e.g. in attendance, punctuality, and uniform).
17. The School told my Investigator that if the Complainant wants to appeal against the decision to withdraw the offer of the place then he may air his concerns at an admissions appeal panel.

Findings

18. The School says it may legitimately refuse an application for the sixth form if the child's admission would prejudice the school's ability to provide an efficient education. It says the School considers it would be detrimental to the school community were the Complainant's son to be admitted. This, the School says, is because of his behaviour record in year 11.
19. Section 1.44 of the 2010 Code prohibits schools from taking account of a pupil's behaviour when allocating sixth form places. The Department for Education has confirmed '*this practice is expressly outlawed*' by both the 2010 and 2012 editions of the Code.
20. Section 1.42 of the Code is explicit that schools cannot refuse an application on the grounds of it prejudicing efficient education unless the school is oversubscribed or, in the case of sixth forms, if the pupil has not achieved the necessary GCSE results. As Child A achieved the requisite GCSE results for entry to the sixth form he could only have been refused admission if the school was oversubscribed. His application would then have to be considered against the published oversubscription criteria. The School failed to follow this process when deciding to withdraw the offer of a place for the complainant's son.
21. Although there are two prescribed grounds where an offer of a place in the sixth form can be withdrawn, neither of these conditions were met in this case. The first is if the parent fails to respond to an offer of a place within a reasonable time, and the second is if a place is obtained through a fraudulent or intentionally misleading application.
22. The School's 'admissions criteria' (see paragraph 16) place certain conditions on entry to its sixth form from its year 11 cohort which are contrary to section 2.1 of the Code. They also contain subjective criteria, contrary to Section 1.7(B) of the Code.

Conclusion

23. The school has not followed the mandatory requirements of the Admissions Code. The decision to withdraw the offer of a place was not one it was entitled to take. I am also concerned at the wider implications of the school's 'admission criteria' on other applicants.

24. Schools are entitled to sanction pupils who breach behaviour and discipline policies. There are a range of such sanctions available to schools to discipline pupils including the use of detentions, fixed-term exclusions, and – for the more serious cases – permanent exclusions. If Child A's behaviour falls below the School's expected standard in the sixth form, it can take the appropriate action. But the School was not entitled to punish Child A for an incident for which he received a fixed term exclusion in year 11 a second time by withdrawing an offer of a place at its sixth form. This maladministration has caused direct injustice to Child A, the complainant's son.
25. The School argued that the Complainant had recourse to an independent appeal panel if he felt his son had been unreasonably refused a place in the sixth form. At the time the complaint was made to me, no such appeal had been arranged. I also considered that there was sufficient public interest in pursuing this complaint as the School's admission practices have wider implications for all those wishing to join its sixth form.

Recommendations

26. In order to put things right, I recommend the School admits Child A to the sixth form immediately, and allows him to study his preferred options. Child A has satisfied the academic requirements to join the sixth form. Beyond that, the school cannot place any conditionality on the offer of a sixth form place.
27. To prevent a recurrence of this situation, I also recommend the School removes any references to the 'admissions criteria' (as set out in paragraph 16 of this report) in its published materials and alerts parents and carers to the changes.

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