



**ADDITIONAL AGENDA ITEMS**

**This is a supplement to the original agenda and includes reports that are additional to the original agenda.**

**NOTTINGHAM CITY COUNCIL**  
**AUDIT COMMITTEE**

**Date:** Friday, 20 July 2018

**Time:** 11.30 am

**Place:** LB 31 - Loxley House, Station Street, Nottingham, NG2 3NG

**Governance Officer:** Zena West **Direct Dial:** 0115 876 4305

**AGENDA**

**Pages**

- |          |   |               |
|----------|---|---------------|
| <b>8</b> | <b>URGENT ITEM - LOCAL GOVERNMENT OMBUDSMAN REPORT ON AN EDUCATION AND CHILDREN'S SERVICES MATTER</b><br>Report of the Corporate Director for Children and Families and the Corporate Director for Strategy and Resources | <b>3 - 16</b> |
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(The Chair of the Committee has agreed that this item, although not on the agenda, can be considered as a matter of urgency in accordance with Section 100B(4)(b) of the Local Government Act 1972, to avoid delay in the Council's response to the Ombudsman's recommendations)

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## AUDIT COMMITTEE – 20 July 2018

<b>Title of paper:</b>	Local Government Ombudsman Report on an Education and Children’s Services Matter	
<b>Director(s)/ Corporate Director(s):</b>	Alison Michalska, Corporate Director for Children and Families Candida Brudenell, Corporate Director for Strategy and Resources	<b>Wards affected:</b> All
<b>Report author(s) and contact details:</b>	Nancy Barnard, Governance Manager, <a href="mailto:nancy.barnard@nottinghamcity.gov.uk">nancy.barnard@nottinghamcity.gov.uk</a> , 0115 876 4312  Jonny Kirk, Access to Learning Service Manager, <a href="mailto:jonny.kirk@nottinghamcity.gov.uk">jonny.kirk@nottinghamcity.gov.uk</a> , 0115 876 4620	
<b>Other colleagues who have provided input:</b>	Malcolm Townroe, Director of Legal and Governance Nick Lee, Head of Access and Learning	
<b>Recommendation(s):</b>		
<b>1</b>	To consider the report of the Local Government Ombudsman.	
<b>2</b>	To agree that the relevant services should comply with the recommendations of the Local Government Ombudsman contained within the report.	

### **1 REASONS FOR RECOMMENDATIONS**

- 1.1 The Local Government and Social Care Ombudsman (LGO) have issued a report following a complaint made to them by a citizen about a school admission appeal hearing. Following an investigation the LGO have issued a report on their findings which is attached as an appendix to this report. When the LGO issues a report, local authorities are required to take that report to a public meeting of Council or a committee with delegated responsibility for considering LGO reports. This committee has been delegated this responsibility by Council as recorded in the Committee’s Terms of Reference. While the report is dated 17 May 2018, the LGO did not publish it until 5 July. Therefore the report could not have been brought to an earlier meeting of the committee.
- 1.2 The LGO’s report has been the subject of significant discussion between the Council and the LGO, including a complaint from the Council regarding the process of the investigation. As a result of the Council’s concerns the final decision has been substantially redrafted to the point that colleagues are now able to recommend to Audit Committee that the recommendations made by the LGO are complied with.

### **2 BACKGROUND**

- 2.1 The LGO considers complaints in relation to school admission appeals when the appeal in question concerns a local authority maintained school. It does not have authority to overturn decisions made by independent Appeal Panels but if it finds fault with the process followed it can recommend a re-hearing.
- 2.2 School Admissions are managed by the Council’s School Admissions Team who manage the admissions process and allocate school places in accordance with schools’

published admission criteria. When a place is refused the parent or guardian has a right of appeal. The School Appeals Team manages this process, arranging for the appeal to be heard by an independent panel in accordance with the School Admissions Appeals Code 2012. The Admissions Team is represented at the hearing and the appellant can attend and present their case. The Panel's decision is binding on all parties.

2.3 During the 2017/18 financial year the School Appeals Team processed 647 appeals against a decision to refuse a school place. Of these 438 progressed to the hearing stage (the remainder having been withdrawn by the appellant or offered a place at the appealed for school prior to the hearing). If an appellant is unhappy with the appeal process their complaint must be dealt with by the LGO (or the Education Funding Agency in the case of academy appeals). Four complaints, including this one, were sent to the LGO during 2017/18. Three were dismissed without moving to the investigation stage. The services take feedback from the LGO seriously. On the very few occasions the LGO has made recommendations in relation to other complaints those findings and recommendations have always been accepted and practices changed as a result. The services will review processes in light of the LGO's comments in this report.

#### 2.4 **Timeline**

On 23 January 2017 an appeal was heard for Mrs D against a decision to refuse her application for a year five place for her son in a maintained city school. An independent Appeal Panel was convened by the School Appeals Team and upheld the decision to refuse. Mrs D was informed of the outcome of the appeal within five working days of the hearing. On 6 June 2017 the LGO informed the Council that Mrs D had submitted a complaint about the conduct of her appeal. The LGO were provided with the records of the hearing and, on the basis of the information provided, decided to investigate.

2.5 On 8 August 2017, following an investigation, the LGO provided a draft decision to the Council. The decision found fault with the hearing and recommended a rehearing. The School Admissions Team and the School Appeals Team disagreed with the LGO's findings and responded on 10 August attaching a substantial amount of additional information. On 22 August the Council submitted a complaint to the LGO about how the complaint had been handled. This was responded to on 30 August and a revised draft decision was issued on 4 September. The teams responded to the revised draft decision on 27 September, detailing further concerns with the findings and process. A final draft decision was issued by the LGO on 10 October and the teams, having given the matter careful consideration, informed the LGO on 23 October that they could not accept the findings or recommendations due to the outstanding concerns with the process and findings themselves.

2.6 Due to the passage of time between the original hearing, the complaint being made and the issuing of a final decision, prior to the resolution of the complaint Mrs D applied for a year six place for her son in the same school. A hearing was arranged in January 2018 and the School Appeals Team invited the LGO to attend that hearing. No one from the LGO was available to attend.

2.7 Because the teams did not accept the LGO's findings and recommendations the investigation then moved to the report stage. A draft report was provided to the Council on 15 February 2018. On 17 May the LGO issued a final report which is the version attached to this report (subject to further minor amendments to ensure anonymity). The final version of the report had been subject to substantial amendment by the LGO. Due to this re-writing colleagues are now in a position to recommend that Audit Committee agree to comply with the recommendations.

## 2.8 LGO's Findings and Recommendations

As detailed in the attached report the LGO found fault with the Council, "primarily in relation to the adversarial questioning of the presenting officer". The three independent Panel Members, the clerk and the admissions presenting officer who were present at the hearing do not consider the questioning at the hearing to have been adversarial. The LGO has acknowledged this position in the final report. Acknowledging that determining the nature of the questioning can be a subjective matter and given the substantial changes made to the final report on this matter, colleagues are now able to recommend complying with the LGO's recommendations.

## 2.9 The specific recommendations made by the LGO are outlined below in italics, followed by the services' response:

*"The Council should:*

a) *apologise to Mrs D;*"

The School Admissions Team and the School Appeals Team regret any distress experienced by Mrs D and are sorry that she felt injustice has occurred. Due to the emotive subject matter dealt with at school appeal hearings and the traumatic experiences that are sometimes discussed, emotional distress can arise. Because of this, Chairs and Panel Members are trained in handling hearings sensitively. If agreed by the Committee, a letter of apology will be sent to Mrs D.

b) *"arrange a fresh Year Five appeal for Mrs D with a new panel, clerk and presenting officer;"*

Subject to Audit Committee's approval Mrs D will be offered a fresh year five hearing in line with the recommendation. It should be noted that, due to the lengthy passage of time since the first year five hearing (as detailed in paragraphs 2.4 – 2.7) the child concerned has now almost completed year six and will be transferring to secondary school in September.

c) *"ensure that appeal personnel are properly trained and understand their legal role including their functions as set out in the School Admissions Appeals Code (2012). The council should tell us when it has conducted this training and confirm that all appeal personnel have attended."*

All Appeals personnel (clerks, independent Panel Members and presenting officers) are well trained and extremely experienced in attending/ presenting Appeals. The Chair of the panel at the hearing in question has 15 years experience and sits regularly. Another appellant provided unsolicited feedback about her experience of her appeal hearing, which was chaired by this Chair and praised the "fair transparent and equitable process" and the "sympathy and understanding" shown for the appellants. Both services also provide paid for advice and services to some own Admission Authorities on their roles and responsibilities and are considered experts in their field. However, additional training will be provided.

## 2.10 The LGO's report states "We have invited the Council to offer a fresh appeal, but it has, so far, declined to do so." The teams did not feel it was appropriate to offer Mrs D a fresh appeal while simultaneously challenging the draft decision/ report. The challenge was made on the basis of a number of factual inaccuracies and the consideration of irrelevant information in the decision/ report and the process followed by the investigator in reaching her conclusions. The concerns about the decision itself have been addressed by the late re-drafting of the LGO's report. It is officers' view that the report now acknowledges the Council's view of events and is much more measured in its tone and accurate in its content.

- 2.11 In terms of the process followed, the Council's concerns were as follows:
- a) The Council submitted 17 pages of additional information (including 11 pages of handwritten notes of the hearing) in response to the initial decision. Eight minutes after the information was sent to the LGO the investigator contacted the Council advising that after considering the contents it was likely that she wouldn't be changing her decision. The Council did not feel that proper consideration could have been given to the additional information within this time. This was acknowledged by the LGO who provided assurances that the information was subsequently properly considered.
  - b) When the investigator came to a final conclusion she emailed a letter to the Council confirming that she would make some of the textual changes requested but that her decision that the case should be reheard would stand. She then asked the Council to agree to a re-hearing. She did not send through the final draft decision at this stage. It took a further two requests from the Council before the final draft decision was provided thereby enabling the Council to fully understand what it was being asked to agree to.
- 2.12 Given the report has now been substantially re-written colleagues are now content that the information provided by the Council has been properly taken into account and the factual inaccuracies have been addressed. Had these amendments been made earlier in the process it is unlikely that we would have reached the report stage.

### 2.13 **Outstanding Clarification**

Paragraph 19 of the report refers to a letter sent from the Admissions Team to Mrs D on 26 October 2016. The LGO state that this letter confirms Mrs D's position that there were no family members attending the school she had applied for. While accepting that the letter could have been more clearly worded, the service wishes to clarify that the letter was re-stating Mrs D's own previously stated view rather than confirming that view to be correct. The service has no way of knowing whether any extended family members are on roll at the school.

## **3 BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING EXEMPT OR CONFIDENTIAL INFORMATION**

3.1 None

## **4 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

- 4.1 Report of the Local Government and Social Care Ombudsman – attached as an appendix.
- 4.2 School Admission Appeals Code 2012.

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

**Investigation into a complaint against  
Nottingham City Council  
(reference number: 17 003 146)**

**17 May 2018**

## The Ombudsman's role

For 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, or another body in jurisdiction, to do are:

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



## Investigation into complaint number 17 003 146 against Nottingham City Council

### Contents

Report summary .....	1
Introduction.....	2
Legal and administrative background.....	2
How we considered this complaint .....	2
Investigation .....	2
Conclusions .....	5
Decision.....	6
Recommendations .....	6

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

Mrs D – the complainant

## Report summary

### Education and Children's Services - Education Appeal Panel: School admissions

Mrs D applied for a place in Year Five for her son at a school, which was outside their catchment area. She was a victim of 'honour'-based violence and wanted her son to attend a school that no other family members attended.

The Council refused the application because the school was full. Mrs D decided to appeal the Council's decision not to give her son a place by going to an independent appeals panel. The purpose of an appeals panel is to consider whether the prejudice caused to the child by not attending a school outweighs the prejudice caused to the school by having an additional pupil.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused, the Council should:

- apologise to Mrs D;
- arrange a fresh Year Five appeal for Mrs D with a new panel, clerk and presenting officer; and,
- ensure that appeal personnel are properly trained and understand their legal role including their functions as set out in the School Admission Appeals Code (2012). The Council should tell us when it has conducted this training and confirm that all appeal personnel have attended.

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*)

## Introduction

1. Mrs D applied for a place in Year Five for her son at a school, which was outside their catchment area. She was a victim of 'honour'-based violence and wanted her son to attend a school that no other family members attended.
2. The Council refused the application because the school was full. Mrs D decided to appeal the Council's decision not to give her son a place.

## Legal and administrative background

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we use the word fault to refer to these. We cannot question whether an independent school admission appeals panel's decision is right or wrong simply because the complainant disagrees with it. We must consider if there was fault in the way the decision was reached. If we find fault, which calls into question the panel's decision, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3), as amended*)
4. The School Admission Appeals Code (2012) is statutory guidance setting out how appeals for schools should be considered.

## How we considered this complaint

5. We produced this report after examining relevant files and documents. We rely on the clerk's notes as a formal record of the hearing. The School Admission Appeals Code (2012) specifies the clerk 'must ensure an accurate record is taken of the points raised at the hearing, including the proceedings, attendance, voting and reasons for decisions'. Officer X was also asked to give written views on the matters complained of and these have been considered and quoted from where appropriate.
6. We have shared several drafts with the complainant and the Council and invited their comments. The comments received were taken into account before the report was finalised.

## Investigation

### What should happen

#### **General requirements for admission appeal hearings**

7. Admission appeals are governed by the School Admission Appeals Code (2012) ('The Code'). The Code sets out how appeals should be managed. The Code says; 'Appeal panels perform a judicial function and must be transparent, accessible, independent and impartial, and operate according to principles of natural justice'.
8. The Code emphasises that admissions authorities must ensure that panel members, clerks and chairs, along with presenting officers, are properly trained and understand their duties.

### ***Conduct of an appeal***

9. The Code says that, at the start of an appeal, 'The chair introduce(es) the parties and explain(s) the roles of the clerk and the panel, explaining how the hearing will be conducted, and ensuring that the parties have sufficient opportunity to state their case and ask questions'.
10. Appeals are heard in two stages. The appeals panel is first asked to consider 'whether the admission arrangements...complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998' and also whether they were correctly and impartially applied in the complainant's case. The panel then has to decide whether 'the admission of additional children would prejudice the provision of efficient education or the efficient use of resources'. Panel members have to satisfy themselves on this point by asking questions and rigorously examining the school's case.
11. The admission authority moves to the second stage of an appeal if it is satisfied the school is full. The Code explains that this stage is where; 'The panel must balance the prejudice to the school against the appellant's case for the child to be admitted to the school. It must take into account the appellant's reasons for expressing a preference for the school, including what that school can offer the child that the allocated or other schools cannot. If the panel considers that the appellant's case outweighs the prejudice to the school it must uphold the appeal'. The presenting officer must 'present the decision not to admit the child and...answer detailed questions about the case being heard and about the school', asking questions about the case if they wish to do so. Although, by the time of the second stage, the panel is aware the school is full, 'the admission authority must be able to demonstrate prejudice over and above the fact that the published admission number has already been reached'.
12. The Code holds that 'each side must be given the opportunity to state their case without unreasonable interruption'.

### **What did happen**

#### ***First stage of the appeal***

13. At the first stage of the appeal, the panel decided the admission arrangements complied with the law. It decided they did so, in this case, as admissions had been prioritised according to the Council's policy. Mrs D's son had not been given a place as there were none available after children with a higher priority had been admitted. The panel then had to decide if the school was full or whether other children could be admitted without having any negative impact on the education of other children already at the school.
14. This first stage was somewhat brief with limited questions on the part of the Chair and panel but the school's case was clear. The panel decided the school was full and another child having a place would 'prejudice the provision of efficient education or the efficient

use of resources'. On the balance of probabilities, we consider the panel had sufficient evidence to make this decision and there is no evidence of fault in it doing so.

### **Second stage**

15. According to the Clerk's notes, at the start of Stage Two, the Chair confirmed the panel had read all the paperwork given in evidence. Evidence of the need for a change of school for the child had been provided, amongst others, by the school the child attended, the police, two Child and Adolescent Mental Health Service (CAMHS) practitioners and a consultant paediatrician. The Chair commented 'it would be helpful if (Officer X) puts questions to you to help with (the) case. Add anything you want (to)'.
16. In accordance with the Code, Mrs D should have had an opportunity to state her case but she did not. She agreed with the Chair that questioning by Officer X might be 'helpful' because she was unaware of how the questioning would proceed. The Council disagrees with this. It says Mrs D had the opportunity to verbally add to 'the substantial amount of written evidence she had submitted and that she consented to begin taking questions from Officer X'.
17. Officer X's questioning was more in the form of a cross-examination centring on why Mrs D believed there were no members of the extended family at the school. Questions were posed and then re-stated in different ways in what we consider to be an adversarial approach. Neither the clerk nor the panel members considered the questioning was inappropriate or adversarial. They said they would have intervened if any party behaved inappropriately but they did not feel it necessary in this case. The Council's view is that 'relying on the (clerk's) notes does not provide...an accurate representation of the clerk and panel's perspective on whether the questioning was adversarial'. However, there should be no need to repeat questions if an answer is given (as is detailed below).
18. Officer X's view, expressed in comments on the draft decision, was that the written case submitted by the complainant was inaccurate. Officer X felt Mrs D sought to deceive the panel and had sought to deceive the panel in previous appeals. This is why questions were asked in this way.
19. The main focus was on why Mrs D had chosen this school rather than any others. According to the clerk's notes, the questioning started with 'How do you know (this school) doesn't have family in?'. Mrs D said she had looked at all schools and knew there was no one in the family attending, at least at present. Further, the Council had already acknowledged that no other family members attended the school in a letter it had written to her on 26 October 2016.
20. Again, according to the clerk's notes, this question was rephrased that it was 'difficult to understand how you know (there are no family members present) when situations change frequently so how would you know?'. This was repeated later; 'How do you know they're (sic) (family members) not attending when you know they do attend other schools' and 'Most applications (to the school) come from (x) catchments so they could be there'. Mrs D was applying to this school as the only school that could meet her son's needs on the grounds it had no family members attending. Our view is that the way the facts were established was adversarial. The Chair did not step in. This is fault.

21. Although the clerk's notes say Mrs D was given the opportunity, by the Chair, to detail 'anything we've not covered that we need to discuss' and then to sum up, by this time she says she felt ill and had clearly been distressed at times through the hearing. This is clear from the clerk's notes. She did mention her and her husband's illnesses and also about her child being ill. This was acknowledged by the hearing and is in the clerk's notes. The Council says that given Mrs D did not appear to be overly distressed and did not inform the panel or the clerk of her emotional state, the Council says the panel acted appropriately in allowing the hearing to continue, particularly because the panel did not consider the questioning to be inappropriate.
22. Mrs D thought the panel, the Chair and the presenting officer had been able to speak together in private. There is no evidence of this.
23. Mrs D was given a decision letter, which set out the case she had made. She does not think all the evidence in there was 'considered' but we would not expect every issue to be explored in depth at the hearing.

## Conclusions

24. We are concerned by the way this appeal was managed and run. In accordance with the Code, it does not accord with the principles of natural justice to question a parent in an adversarial way. Officer X commented; 'This (questioning) was done with sensitivity and proportionately' but, on the balance of probabilities, we disagree that the questioning was 'sensitive' and 'proportionate' in this case. It is not for Officer X to 'prove' a case is wrong – it is for the panel to consider whether the prejudice to the child outweighs the prejudice to the school. Officer X, in comments to us, continued that 'The parent had not been truthful at times (and) I had a duty to bring this to the attention of the panel'. It was not for Officer X to make any decision on the appellant's 'truthfulness' and convey that to the panel. It is also not necessary for questions to be repeated in case another answer is elicited. Having weighed the evidence, on balance, we are satisfied that, on this occasion, the questioning was not appropriate for a school admission appeal. This is fault and in our view it is sufficient to undermine confidence in the fairness of the process.
25. It is fault that the panel were provided with information about the character and history of the appellant that was not relevant to the matter under consideration. In written comments on the draft decision, Officer X told the investigator; 'The questions were carefully posed to parent so the panel who are **hearing** the appeal were able to understand from the answers given by parent that they differ to events and points raised in the written case. Parent has told many untruths throughout a number of appeals and conversations and it is within the boundaries of natural justice to ensure the panel are not able to be purposely misled'. Even if that is the Council's view, the parent should still be able to state their case so the panel can consider it on its own merits. Not to allow this is fault. It is not necessary for the panel to know what the Council thinks of the complainant's character and history of appeals and, indeed, it jeopardises its impartiality if it does. This is because the panel's view of the appeal may be prejudiced or they might take account of information that does not directly relate to the appeal being heard.

26. There was fault in the way this panel was run primarily in relation to the adversarial questioning. We consider, on balance, this resulted in the appellant not receiving a fair hearing. We have invited the Council to offer a fresh appeal, but it has, so far, declined to do this.

## Decision

27. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs D.

## Recommendations

28. To remedy the injustice caused, the Council should:

- apologise to Mrs D;
- arrange a fresh Year Five appeal for Mrs D with a new panel, clerk and presenting officer; and,
- ensure that appeal personnel are properly trained and understand their legal role including their functions as set out in the School Admission Appeals Code (2012). The Council should tell us when it has conducted this training and confirm that all appeal personnel have attended.

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)***

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