

CITY COUNCIL - 13 JULY 2009

REPORT OF THE PORTFOLIO HOLDER FOR RESOURCES, ECONOMIC DEVELOPMENT AND REPUTATION

OMBUDSMAN REPORT - MALADMINISTRATION - EDUCATION ADMISSION APPEAL

1 SUMMARY

- 1.1 Executive Board and Council are required to consider and respond to a report of the Local Government Ombudsman which found maladministration (not causing injustice) in respect of an education appeal hearing held in 2008. Adherence to the advice provided by the Ombudsman will ensure that the education appeals process is administered in accordance with the Schools Admission Appeals Code.

2 RECOMMENDATIONS

- 2.1 That the recommendations of the Local Government Ombudsman be accepted, noting that procedures for admission appeals have already been changed in response to the issues in this case.

3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 3.1 The recommendation set out above reflects the advice given by the Ombudsman in her report as to the future use of photographic evidence at education appeal hearings and adherence to that advice will guard against future breaches of the Schools Admission Appeals Code.

4 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 4.1 None.

5 BACKGROUND

- 5.1 The Local Government Ombudsman issued a report on 7 May 2009 into her investigation of a complaint about an education admission appeal held in summer 2008 and found that there had been maladministration (not causing injustice). The Ombudsman requires

that the report is considered by the Executive Board and Council and that details of their decisions on the report are conveyed to her within 3 months of issue. A copy of the Ombudsman's report has been circulated separately.

- 5.2 Education admission appeals are determined by an independent panel. Committee Services manage the education appeals process, organising and clerking the appeals. Appeals are heard throughout the year but particularly following the annual admission rounds for primary and secondary schools when multiple appeals are heard for popular schools. It was in respect of one such multiple appeal that a complaint was made to the Ombudsman.
- 5.3 The Ombudsman considered a complaint about the use of photographs by the Childrens Services representative at the appeal to illustrate conditions and facilities in school (which had been detailed in a written statement circulated in advance to appellants and the panel). The photographs had not been circulated with the written statement and had not been seen by either the panel or the appellants before the hearing. The Clerk and the Education Appeal Panel did not stop to consider whether this photographic evidence, produced on the day, could be used or whether there should be an adjournment. The Ombudsman found that this was in breach of the provisions of the Schools Admission Appeals Code about making evidence available in advance to the parties to the appeal and was contrary to the rules of natural justice. The Ombudsman's detailed comments and conclusions on this issue are set out in her report.
- 5.4 Although the Ombudsman concluded that a breach of the Schools Admission Appeals Code had occurred and that, accordingly, there was maladministration, she also concluded that the breach did not cause any injustice to the complainant. The complainant knew the school well and had adequate opportunity to challenge the admission authority's case that the school was full. The Ombudsman also acknowledges in the report that while the complainant raised other issues about the appeals process, none of these were upheld.
- 5.5 Practices at admission appeals were changed, following this complaint, in anticipation of this report. The Executive Board considered a report from the Director of Legal and Democratic Services on this matter on 16 June 2009 and agreed that the recommendations of the Local Government Ombudsman, in her report, should be accepted.

6 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

6.1 There are no direct financial implications or value for money issues arising from this report.

7 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

7.1 Failure to implement the recommendations of the Ombudsman as to the use of photographic evidence at admission appeal hearings would leave the Appeal Panel vulnerable to further breaches of the code and findings of maladministration.

8 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

8.1 None.

9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

9.1 Report of the Director of Legal and Democratic Services to the Executive Board dated 16 June 2009.

COUNCILLOR GRAHAM CHAPMAN

**PORTFOLIO HOLDER FOR RESOURCES, ECONOMIC
DEVELOPMENT AND REPUTATION.**

Report
on an investigation into
complaint no 08 010 435 against
Nottingham City Council

7 May 2009

**Investigation into complaint no 08 010 435
against Nottingham City Council**

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Key to names used

Mrs E - the Complainant

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.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Schools Admissions

Appeals about school admissions must comply with the statutory School Admissions Appeal Code. The Code sets out the evidence that an admission authority must provide to be sent to parents seven days before a hearing. It says that all written material and evidence must be seen by all parties and they must have a chance to comment on any new issues. Appeal Panels must not 'tour' a school to decide if it is full.

In this case the admissions authority brought photographs to the appeal hearing and displayed them to support its case that the school was full. Neither the parents nor the Panel had seen the photographs before.

The Local Government Ombudsman found that this was a breach of the Code and of the rules of natural justice. Although the Ombudsman was confident that this had not happened in this case, photographs can be manipulated. Neither parents nor the Panel knew about the photographs in advance and the parents had no opportunity to comment or challenge them.

The Panel did not stop to consider whether the photographs could be used as evidence.

In the particular circumstances of this case the parent who complained did not suffer an injustice by the photographs being used. She knew the school well and had adequate opportunity to challenge the admission authority's case that it was full.

Finding

Maladministration, No Injustice

Recommended remedy

The Ombudsman recommends that:

- photographs are not used in school admission appeals unless there are exceptional circumstances;
- in such cases parents should be given copies in advance with an explanation of why photographs are being used and what they illustrate; and
- in such cases, parents should be given the opportunity to inspect what is shown in the photographs and challenge the admissions authority.

The Ombudsman is pleased to record that the Council has accepted these recommendations.

The Complaint

1. Mrs E complains that at a school admission appeal hearing:
 - the officer representing the Council as Local Education Authority (LEA) presented photographs of the school to illustrate the LEA's case;
 - the photographs were not sent to the parents who were appealing at the hearing and they were not given copies at the hearing.
2. Mrs E also raised other complaints about the appeals process which were not upheld and have not formed part of this report.

Legal and Administrative Background

3. Appeals for school admissions are governed by the School Admission Appeals Code 2008. This says at paragraphs 2.19-2.21

Production of evidence from the admission authority prior to the hearing.

- 2.19 *The admission authority **must** supply the clerk to the appeal panel with the documents listed below at least 10 school days before the hearing (unless this is not practicable because the parents have waived their right to a period of 10 school days notice of their appeal as in paragraph 2.9);*
 - a) *a written statement summarising how places at the school were allocated....and how the admission arrangements for the school apply to the parents' application, accompanied by any relevant background information and documents on which they placed substantial reliance....;*
 - b) *a written statement summarising the reasons for the decision (and attaching a copy of the decision letter)..... The statement **should** include a summary of the school's net capacity and could also include a map/plan of the school if this would be helpful. Any statement referring to accommodation, class sizes, capacity etc, **should** be supported by factual information, as panel members cannot undergo 'tours' of schools to make their own assessments, as it could call into question their independence and lead to allegations of lobbying;.....*
 - c) *copies of any information or documents that will be supplied to the panel at the hearing, including any documents that have been submitted by parents.*
- 2.20 *Clerks **must** send out appeal papers to parents, presenting officer and panel members at least 7 working days before the hearing..... The clerk **must not** sift out what they consider inappropriate material; it is for the panel to consider what material is relevant and what weight to give it.*

2.21 *Parents and presenting officers are responsible for deciding how best to organise their presentation of evidence. If any of the parties wish to raise matters at, or produce documents for, the hearing which are not covered by the information supplied by the clerk to the appeal panel, these should be submitted to the clerk before the hearing. Where the parent wishes to produce a short document which was not previously obtainable (such as a doctor's note) and where it can easily be considered at the time of the hearing, the panel must allow for this. However, it may be necessary to adjourn the hearing if significant information is received less than 3 working days before the hearing, which the panel considers may need further investigation or which the admission authority may need time to respond to e.g. information clearly indicating that the admission arrangements were applied incorrectly and requiring verification by the admission authority.*

4. Paragraph 2.26 (c) says written material and evidence must have been seen by all parties. If new issues arise during the proceedings, all parties should be offered an opportunity to consider and comment on them.

The Appeal Hearing

5. This appeal was for a place at an infant school with two reception classes. There were 52 places available, split between two classes with 26 children in each class. As each class would have fewer than 30 children the rules on infant class size do not apply. Where the infant class size rules are not relevant the Appeal Panel will consider the appeal in two stages. The first stage is to establish the facts. In this first stage the Panel considers if the school admission arrangements have been properly applied and if the school has proved its case that it is full and the admission of another child would cause it prejudice. If the Panel find that the admission arrangements have been properly applied and the school is full, it then goes to the second, balancing, stage to decide if the individual circumstances of the child are such that they outweigh any prejudice that would be caused to the school by admitting him or her.
6. The first stage of this appeal hearing, to decide whether the school was full, was a grouped hearing with all the parents present. The Officer representing the Council brought six photographs labeled:
 - Infant access leading onto narrow corridor
 - Infant access located through a small teaching area
 - Reception class
 - Reception class
 - Storage in corridor
 - Storage in Reception class
7. The photographs were not supplied to the clerk before the hearing. The minutes record that the Officer brought some pictures. The Panel did not discuss whether the photographs should be allowed or whether the hearing should be adjourned.

8. Mrs E says the photographs were put up on a board at the front of the room. The Council says that the Panel were given two sets to look at and three sets were available for parents. Neither the Panel nor the parents were given copies of the photographs to take away.
9. The Council says that the photographs were not sent to the Clerk for distribution before the hearing because some had images of children. The parents of the children shown in the photographs would have to give permission before the Council could publish them. It says it did not ask these parents for their permission because:
 - the photographs were taken only to demonstrate points being made in the statement;
 - there was no intention to publish them;
 - no objections had ever been raised previously to photographs being used in this way at admission appeals; and
 - it would be onerous and time consuming to obtain permission and there would be no reason to do so.
10. The Council also says that:
 - the photographs were not new evidence but illustrated points in its written statement;
 - the written statement was sent to parents within the statutory timescale;
 - parents had ample time before the appeal to challenge any of the points in the statement;
 - all the parents at the appeal hearing knew the school as they have children in either the main school or the nursery, and so the areas shown in the photographs would be known to them;
 - photographs have been used in this way at stage 1 of multiple appeals for a number of years without any objections.

Conclusion

11. The way that photographs were used in this appeal did not comply with the Code and was maladministration.

12. The Code says that the admission authority must supply the clerk with specified documents at least 10 school days before the hearing - including any information or documents that will be supplied to the panel at the hearing, and that statements should be supported by factual information. The Council accepts that the photographs were used to illustrate its written statement. It was therefore obliged to send them to the Clerk ten days before the hearing.
13. The Code says that if any party wants to raise matters or produce documents not covered by the information supplied by the clerk these should be submitted to the clerk before the hearing and it may be necessary to adjourn the hearing.
14. The Clerk and the Panel allowed the photographs to be used without considering whether it was appropriate or whether the hearing should be adjourned. It is irrelevant that the parents at the hearing did not object. The Clerk, the Chair and the Panel are responsible for following the Code - not the parents. Very few parents are experts on the School Admission Appeals Code and rely on the Council for information and the independent Clerk and Chair for proper administration of the rules. The Council did not give the parents any information about the evidence to be provided to the hearing or the right to object to the late evidence or information. The Clerk or the Chair have the power and responsibility to refuse to admit any evidence that does not comply with the Code.
15. A guiding principle is that the appeal hearing should operate according to the principles of natural justice. The use of photographs did not meet these principles because:
 - the photographs were selected by the Council to support its case. Parents cannot, and should not, take their own photographs to dispute the Council's case;
 - photographs are not independently verified and could be manipulated or staged to support a particular stance (but I am not suggesting that this has happened);
 - the Code says that panels should not tour schools. Using photographs is worse than a tour because the Panel is given pre-selected images that they cannot test.
16. I conclude that the Council acted with maladministration. Using photographs in this way is inherently unfair and against the ethos of the School Admission Appeals Code.
17. There is absolutely no evidence in this particular case that the photographs were in any way manipulated, staged or unfair. Mrs E knows the school well and so using the photographs did not cause her an injustice because she had the opportunity to properly challenge the Council's case that the school was full. I am grateful to her for bringing this issue to my attention.

18. I recommend that Appeal Panels should not allow photographs to be used in admission appeals hearings unless: there are exceptional circumstances, parents have copies in advance and the opportunity to inspect the subjects and challenge the points being illustrated.
19. I am pleased that following receipt of a draft of this report the Council accepted this advice.



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7 May 2009