

The Ombudsman's final decision

Summary: I have found fault with the admissions authority for failing to consider Mr X's application properly afresh following withdrawal of a place and failing to offer him an appeal. I have also found fault with the school for failing to offer Mr X an appeal following his subsequent application.

The complaint

1. Mr X complains that having withdrawn its offer of a place at the school for his son, the admissions authority failed to properly consider his application afresh and failed to offer him an appeal.
2. Mr X has since commented that he would like me to consider that the school failed to respond to his subsequent application for a place at the school, made on 26 July 2013. I have therefore also considered this below.

What I have investigated

3. Mr X believes the school was wrong to say his original application was fraudulent and has asked me to consider whether the decision was sound. He also says that the school was not entitled to come to a view about this at the time it did. However, those are not matters the Ombudsman can or should consider at this point in the process. The first concerns the merits of the evidence and the second is a matter that an independent appeal panel is specifically required by law to consider when it hears admission appeals. It must consider whether the admission arrangements were correctly and impartially applied to the child.
4. I have limited the scope of this investigation to matters the Ombudsman has the power to consider or should properly consider at this time. The proper forum for consideration of the merits of the school's decision to withdraw the place on grounds of fraud is an independent appeal hearing. Unusually in this case, Mr X has not yet had the opportunity to have the matter heard on appeal. The Ombudsman does not seek to fetter the discretion of an independent appeal panel by determining these issues in advance.

The Ombudsman's role and powers

5. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

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6. The Ombudsman expects someone to appeal to a court, tribunal or government minister if they have a right to. However, she may decide to investigate a complaint if she considers it would be unreasonable for a person to have to do so. (*Local Government Act 1974, section 26(6)*)
 7. The Ombudsman has the power to start or discontinue an investigation into a complaint within her jurisdiction. (*Local Government Act 1974, sections 24A(6) and 34B(8)*)
 8. Admission authorities are within the jurisdiction of the Ombudsman by virtue of s25(5)(d) of the Local Government Act 1974. That section says: “Any reference to an authority to which this Part of this Act applies also includes a reference to [...] the governing body of any [...] voluntary school so far as acting in connection with the admission of pupils to the school”.

How I considered this complaint

9. I have considered what Mr X told both my colleague and me. I have also considered the school’s responses to my colleague’s enquiries and my own further enquiries about the complaint. I have also made third party enquiries of the council that administered the admissions process on behalf of the school. In addition, I have considered relevant law.

What I found

Legal background

10. Admissions authorities are required to comply with the mandatory provisions of the School Admission Code of February 2012 (the ‘Code’), which applies to applications for places for September 2013. The Code is statutory guidance.
11. Paragraph 2.12 of the Code says: “An admission authority must not withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application. Where the parent has not responded to the offer, the admission authority must give the parent a further opportunity to respond and explain that the offer may be withdrawn if they do not. Where an offer is withdrawn on the basis of misleading information, the application must be considered afresh, and a right of appeal offered if an offer is refused”.
12. By s94(2) of the School Standards and Framework Act 1998:
“The governing body of a foundation or voluntary aided school shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school.”
13. The School Admission Appeals Code (the “Appeals Code”) says at paragraph 3.2 that:
“The panel must consider the following matters in relation to each child that is the subject of an appeal:
a) whether the admission arrangements (including the area’s co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998; and

b) whether the admission arrangements were correctly and impartially applied in the case in question”.

The admissions arrangements

14. The school is a voluntary aided. The governing body is the admission authority and is responsible for determining admission arrangements, and decisions on which students are offered places. The local council offers places on behalf of the governing body of the school as part of its duty under the system of co-ordinated admissions. It also operates the 11+ test on behalf of all selective/grammar schools in the county.
15. The admission criteria provide that after places have been allocated to looked after children:
 - the first 50% of the remaining places will be allocated to children living in the ‘priority circle’ who meet the qualifying standard for the school;
 - the residual 50% of places will be allocated to children living in the eastern area of the county who meet the qualifying standard for the school;
 - children living in the priority circle who are considered by the admission authority’s Committee of Reference and placed as ‘exceptions’;
 - other children who meet the qualifying standard for the school; and
 - other children who are considered by the admission authority’s Committee of Reference as borderline candidates, and placed in ranking order as ‘exceptions’.
16. Within all criteria first priority is given to those achieving the highest score in the 11+ test. Children living outside the priority area and late registrations and late applications will be offered places in the first round only if there are insufficient children of the required level of ability living within the priority area.

Key facts

17. In November 2012 Mr X applied for a place for a place at the school for his son for September 2013. The child’s brother already attended the school, and the child’s 11+ results qualified the child for a place. Mr X also said he intended to move closer to the school. The council (on behalf of the school) told Mr X that he needed to provide evidence by February 2013 that he owned property closer to the school or that he would complete the purchase before the end of August. He would also need to prove he had moved into the property by the end of August, otherwise the admission authority would consider withdrawing the offer of a place. However, the council also explained that this would only happen if a place would not have been offered on the basis of the child’s existing address.
18. In January 2013 Mr X sent proof of ownership of his new address. The council said it would need further evidence at the end of July confirming he had moved. In March, the school offered Mr X a place based on the child’s test scores and his new address.
19. Later, Mr X asked about the possibility of changing his preferences, because his older child was being bullied at the school.
20. He then asked the school to withdraw its offer and allow him to reapply based on his existing address. Mr X says the council told him that if he did so, the place would immediately be re-offered to him based on his existing address. He therefore wished to do so because this appeared to provide a simple solution.

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21. The council wrote to the school on 13 March saying that Mr X had admitted, during their conversation, that he had never intended to move into his new property. Instead he would look for a larger house in the area once he received confirmation of the child's place at the school. Mr X takes issue with this, saying that he was merely enquiring what the rules were in different scenarios. However, the school's view was that it should withdraw the offer of a place because it appeared that Mr X had given it misleading information. Part of its reasoning was, for example, that there appeared to be a large volume of emails from different email addresses, thought to have come from Mr X. In these emails, the council says he asked many questions, including how long an applicant needed live at an address for it to count. They were also aware that the application for the child's older brother had also been made based on the new address, but he had never moved to it. Mr X comments that this was only because the council had told him he need not move because his older son would have been entitled to a place in any event from the existing address.
 22. The school decided to withdraw the place. Mr X emailed the council to say that he had never said his son would not be moving to the new address. If it was necessary for him to move, he would.
 23. The council said to the school that if it withdrew the current offer, the child would immediately go on to the waiting list. He would be top of the list regardless of which address he lived at. This was because the child would have been admitted on the strength of his 11+ results, irrespective of which address he used. So, the council's view was that the school would have to reoffer him the vacancy that would be created by withdrawing the offer.
 24. However, on 17 July the school wrote to Mr X withdrawing its offer of a place for the child. Then the school offered the place that had become vacant to a child on the waiting list. At that point the school said it would consider Mr X's application afresh on 19 July. The school did not ask Mr X to fill in a fresh application form but did ask him to confirm which address he wanted to use to apply.
 25. Mr X responded by a letter dated 18 July 2013 that "if [the child] has to move to the [new address], he will move. The move would only be reconsidered if permission were provided not to move." Effectively, he was saying that if the school was prepared to offer the child a place based on his current address, he would not move, but otherwise, he would. He said that "If [the school]'s view is I am not going to move to the [new address] provided, I assume they will automatically reassess the application from my current address". Later he asks the school to consider whether they "are prepared to allow [the child] a place on the basis he does not move from my current address? If they are prepared to do so I would welcome permission."
 26. The school took it that Mr X had failed to specify which address he meant and therefore it would make the decision for him. The school decided to consider the matter based on the new address. It did not specify its reasons for doing so.
 27. The school again found the application to be fraudulent or misleading and wrote to him with its decision on 25 July 2013. The school did not offer him an appeal. The school later explained this was because the school had 'rejected' (i.e. in essence, declined to process) the application and therefore the school did not have to offer him an appeal.
 28. Mr X made a fresh application via a phone call to a different authority on 26 July 2013. The matter was passed by that authority to the council. The school under

discussion here was his first preference. The council accepted the new address as meeting the 'initial address requirements' and wrote to him on 6 August with the outcome. The council treated the application as late and offered him a place at a school some distance away. In relation to the school under discussion, the council said in the letter: "Once we have received a response from the governing body of [the school] we will notify you".

29. Mr X says he later moved to the new address and was there for the start of the autumn term in September.
30. However, he says he has not received a response from the school in relation to his subsequent application, nor is his son on the waiting list for the school. He says that on 5 September 2013 a place became available at the school and it was awarded to a child who received a lower mark than his child did.

Agreed action

31. I recommend the school should offer an appeal to Mr X for the reasons given below.
32. The school has agreed to do so.

Final decision

1. Handling of Mr X's further opportunity to respond following withdrawal

33. The school says it considered Mr X's application afresh following withdrawal of the place but rejected it because it was not based on any new or different information. The school also took the view that Mr X was being misleading by refusing to specify which address he wanted to use for the reconsideration of his application.
34. The school makes a distinction here between 'refusing' to make an offer (which it accepts would trigger a right of appeal) and 'rejecting' the application, by which it means not processing it. Its view is that if it rejects an offer, it is not under an obligation to offer an appeal.
35. The school also argues that it was not reasonable for an admission authority to have to reprocess an application made before in the same terms, if it had already withdrawn the place on the grounds that it was fraudulent. It says the Code seems to be written in a way that suggests that any fresh consideration of an application will contain different information for the school to consider. The school says the Code is silent on what happens if a school withdraws an offer and then an application is made in the same terms.
36. As set out above, the Code says that "Where an offer is withdrawn on the basis of misleading information, the application must be considered afresh, and a right of appeal offered if an offer is refused".
37. In relation to the right of appeal, the law says that voluntary aided schools "shall make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school."
38. The Code was brought into force with the broad objective of ensuring all applications are processed according to the rules it specified. There is no option within the terms of the Code for admission authorities to decide to handle an application outside the stated rules.

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39. The school speculates that rejection is possible and that if rejection is used, this enables the school to avoid the need to offer an appeal. There is nothing in the wording of the Code or the underlying legislation to suggest that either of those is an option. In other words, there is no provision in the Code to enable admission authorities to 'reject' applications and no provision for them to withhold an applicant's right of appeal in any circumstances.
40. I therefore do not accept the admission authority's position that it is entitled to 'reject' an application without processing it.
41. Mr X goes on to say that it is unfair that his application was not considered using his old address, as he thinks he would have been entitled to a place, had this been done. He also argues in the alternative that he was offered a place originally based solely on his child's test scores, and not based on his address. Therefore, any consideration or attempt to verify his address by the school was strictly irrelevant. His child was entitled to retain his place in any event.
42. I consider these questions to be matters that should more properly be put before an independent appeal panel. As explained, Mr X has not yet had an appeal. An appeal panel is required by law to consider whether the admissions arrangements have been properly applied to his case. This would include consideration of the issues Mr X raises, including the address to use and whether consideration of the address was appropriate. The panel can also consider the merits of his arguments and come to a decision about these.
43. As described above, I find that the school erred in that it failed to consider Mr X's application following the withdrawal of the place. In order to put Mr X's child back in the position he would have been in had the application been properly dealt with, I recommend the child should be offered an appeal for a place at the school.

2. Handling of Mr X's subsequent application

44. On 26 July 2013 Mr X made what I shall refer to as a 'subsequent application' for a place at the school. In contrast to what he said in his letter of 18 July, he made the address for this application his new address.
45. As noted above, the council accepted his application and processed it on behalf of the various admission authorities involved and wrote to Mr X on 6 August with the outcome. By that time, most of the schools were full, but in its letter, the council noted that the school that is the subject of this investigation had not yet responded. Just before term began, Mr X says he moved to the new address. A place became available at the school on 5 September 2013. Mr X says his son should have got that place.
46. As noted above, independent appeal panels are required by law to consider whether the admission arrangements have been properly applied to the case in question. This would include consideration of whether the child should have been put on the waiting list and offered the place that became available on 5 September 2013. I therefore do not propose to consider this matter further.
47. Mr X also complains that he was not told about how his subsequent application was being treated. The school did not write to Mr X to tell him that it was rejecting his subsequent application and did not offer Mr X an appeal. The council had accepted Mr X's subsequent application on behalf of the school and on that basis it seems to me that the school should have considered it in the normal way. This would include informing Mr X of the outcome and offering Mr X an appeal if a place was not awarded. It did not do either and this is fault.

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48. In relation specifically to the failure to inform Mr X of the outcome, I think it was clear to Mr X that the school had not changed its position and that therefore it was not going to award the child a place. Therefore I find no tangible injustice arises from this.
49. In relation to the failure to offer him an appeal, I recommend the school should now do so, so as to put Mr X back in the position he would have been in, had it processed his application correctly.

Conclusion

50. I have found the same fault – failure to offer Mr X an appeal – in respect of both the school’s handling of (1) Mr X’s further opportunity to respond following withdrawal and (2) its handling of his subsequent application.
51. For the reasons described above, I recommend the school arrange an independent appeal hearing for Mr X.

Parts of the complaint that I did not investigate

52. As explained above, Mr X believes the school was wrong to say his original application was fraudulent and asked me to consider whether the decision was sound. He also says that the school was not entitled to come to a view about this at the time it did. However, I have limited the scope of this investigation to matters the Ombudsman has the power to consider and should properly consider at this point in the process. These are not matters the Ombudsman should consider at this time. The proper forum for consideration of these matters is an independent appeal hearing and the Ombudsman will not usurp the authority of an independent appeal panel by determining these issues in advance.

Investigator’s decision on behalf of the Ombudsman