



19 November 2008

**The Commission for  
Local Administration in England**

Mr G Hussain

By email

**Anne Seex**  
Local Government Ombudsman

**Michael King**  
Deputy Ombudsman

Our Ref: 08

(Please quote our reference when contacting us and, if using email, please put the reference number in the email subject header)

**If telephoning contact: Mrs Aitchison's secretary on 01904 380242**

**If e-mailing: [Birmingham@lgo.org.uk](mailto:Birmingham@lgo.org.uk)**

Dear Mr Hussain

### **Complaint by Mr A against Birmingham City Council**

1. Further to my letter of 29 October and our telephone conversation of 13 November, I have carefully considered all the information you have provided, the Council's comments which have already been sent to you, your reply, and the results of further investigation I have carried out. This letter sets out my provisional view and invites you to comment before I reach a conclusion.

### **Provisional view**

2. I believe that it may now be possible to achieve a just remedy for the complaint.

3. I originally summarised the complaint as being about the way in which, in February 2007, an Appeal Panel heard B's appeal against the decision of his son, A's former school, Alston Primary, to remove A from roll and not to readmit him because to do so would have prejudiced efficient education.

4. The focus at this stage was on the actions of the Appeal Panel. I advised you that the core issue of Asam's removal from roll was outside the Ombudsman's jurisdiction because it was action taken by a school.

5. More recently, however, I have widened the investigation to look, in part, at the removal from roll. This was on the basis that although the original (November 2006) decision of the school was outside jurisdiction, the subsequent consideration of the school's actions by officers within the Council's Children and Families Department and their decision on this (set out in a

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letter of April 2007) constituted administrative action by the Council and so was within jurisdiction.

6. As far as the Appeal Panel part of the complaint is concerned, my view is that the case put forward by the Council that the school was full was flawed and misleading because it contained references to infant class size appeals which were irrelevant to A's situation. I think that amounted to maladministration and the Council agreed to a fresh appeal. In fact, that is not necessary because A has been offered a fresh place at the school concerned for the current academic year. Incidentally, I should point out that this was an admission and not an exclusion appeal. A was not excluded – his name was removed from roll which is a separate process from exclusion – so he was not entitled to an exclusion appeal.

7. The Council has amended the standard wording used for primary school appeals and has deleted unnecessary references to infant class size appeals. I am in correspondence with the Council about another technical point to do with the minutes of appeals but that does not affect B's complaint. I am not proposing to take any further action on that part of the complaint which concerns the Appeal Panel. I consider the offer of a fresh appeal (although not needed) and the changes to documentation to be a suitable settlement.

8. That leaves that part of the complaint regarding the Council's decision in April 2007 (and subsequently) to endorse the school's action in removing A from roll. I have put to the Council my view that the Council's endorsement was flawed because it did not take proper account of the wording of the relevant Regulations – the Education (Pupil Registration) (England) Regulations 2006.

9. This is the same point that you have been making to the Council. A pupil may only be removed from a school roll under very specific circumstances. The Council relied on section 8 (f) of the Regulations in A's case. That applies to a pupil granted leave of absence exceeding ten school days for the purpose of a holiday who fails to return in the ten school days following the expiry of the period for which leave was granted. A had been granted 10 days leave only - not leave exceeding 10 days so his removal from roll was not in accordance with the Regulations.

10. Part of the Council's policy guidance does state that various conditions must be satisfied before a pupil's name can be removed and refers to the agreed grant of leave exceeding 10 days. But another part of the same guidance refers to pupils being removed from roll if they have been granted ten or more days leave and the Council also used this to justify the removal of A's name from roll. Ten or more is not the same as exceeding ten days. The Council failed to identify in April 2007 and thereafter that the school's original decision was in conflict with the legal requirements and that amounted to maladministration.

11. I believe that maladministration caused some injustice to A and his family. I very much doubt that we could say it directly caused loss of education because alternative education had been on offer from an early stage and A did start attending an alternative school in September 2007. But that was not as convenient as attending the original school and there was also the emotional upheaval of settling in to a new school. We can never be precise about the amount of a remedy but I think it would be reasonable for the Council to make a meaningful gesture as regards a compensatory payment, in recognition of the inconvenience and distress caused. I have asked the Council to consider making a payment of £1000 to B. Officers have

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reservations because they consider the amount to be high in the circumstances, however they have agreed to make the payment on this occasion and review their policy.

12. I think this is a very fair way to settle the complaint and hope you agree. But before I reach a conclusion, could you please discuss the proposal with B and let me have any comments within the next two weeks? If you need more time to respond, please let me know.

13. If I do not hear from you by then, this letter will stand as my decision. I shall discontinue my investigation and close the complaint. As the Local Government Act 1974 requires the Ombudsman to inform the Council of the decision on your complaint, I will then write to let the Council's Chief Executive know the outcome.

14. If you want any papers you sent returned to you, please let us know as soon as possible. Our policy is normally to destroy files 14 months after we have decided the complaint.

Yours sincerely

A handwritten signature in black ink that reads "R. K. Aitchison". The signature is written in a cursive, slightly slanted style.

Ros Aitchison (Mrs)  
Investigator