

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

**Investigation into a complaint about  
Bury Metropolitan Borough Council  
(reference number: 23 006 024)**

**4 January 2024**

# The Ombudsman's role

For almost 50 years we have independently and impartially investigated complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

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

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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

Miss X The complainant

B Her daughter

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## Report summary

### Education Appeal Panel/school admissions

Miss X had complained about the Council's failures regarding her daughter's lack of education when in her first year at secondary school. We had found fault causing injustice. The Council agreed to remedy the complaint in the way we had recommended. However, the Council failed to comply with the agreed actions within the timescale required.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

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)

The Council plans to do this in January 2024 and it will share its report with us.

The Council has now provided evidence that it has apologised and paid Miss X the required payments.

In response to a draft version of this report, the Council has also introduced the following measures to improve its services.

- A new policy on elective home education, where the council asks parents to apply for school places if they are providing unsuitable home education, and are referred to Children Missing from Education and School Attendance officers, if they do not. The team has been restructured with additional staff brought in.
- Monthly reviews of primary school-aged children under a new in-year fair access panel policy.
- Additional support for parents/carers who want their children to be re-integrated to school.
- Minutes of decisions at its fair access panel.
- Staff training around principles of good complaint handling.

We are pleased that the Council has now taken action to resolve Miss X's complaints.

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## The complaint

1. In an earlier investigation by us in 2023, (22 002 824), we considered a complaint from Miss X:
  - a) that the Council failed to consider properly her daughter's (B's) case at its fair access Panel (the Panel) or provide reasons why B could not be admitted to Miss X's preferred school (School C) besides saying the school was oversubscribed;
  - b) that there had been no contact from the school allocated at the Panel; and
  - c) there had been little help from the home education team or follow up in respect of Miss X's attempts to home educate B.

## The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
3. We cannot investigate complaints about what happens in schools. (Local Government Act 1974, Schedule 5, paragraph 5(b))
4. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.
5. We consider six criteria when deciding whether to issue a public interest report, one of which is non-compliance with an Ombudsman's recommendation.

## How we considered this complaint

6. We have produced this report after examining relevant documents, including our final decision on our original investigation into Miss X's complaint and our letters and correspondence with the Council. We have also spoken to Miss X.
7. Miss X and the Council had an opportunity to comment on the draft report. We considered their comments before completing this report.

## What we found

### Our first investigation - 22 002 824

8. Our previous investigation into Miss X's complaint made the following findings.

**Complaint (a): failed to consider B's case properly at the fair access Panel or provide reasons why B could not be admitted to Miss X's preferred school (School C) besides saying the school was oversubscribed**
9. Miss X told the Council in September 2021 that she would not be sending B to the allocated school, her third-choice preference. She said she would be home educating instead. By February 2022 the Council decided that the education provided at home was unsatisfactory. By this time, Miss X also wanted B to be at a school.
10. The Council decided B's case was eligible for consideration under its fair access protocol. We found there should have been a risk assessment to

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identify B's possible needs to identify the most suitable placement. We could not see that this happened, so our view was that this was fault.

11. It was not possible to determine whether the Panel considered B's case properly because there were no minutes of the meeting which showed how the Panel considered all the relevant facts. Just recording the decision did not give any information about the discussions which were had, or how Miss X's reasons for wanting a place at her preferred school were considered. We found that it was fault not to make brief minutes of the discussions or a rationale for the decisions made.

**Complaint (b): that there was no contact from the school allocated by the Panel**

12. The Council subsequently offered B a place at a school (School D). There was a discrepancy between what the Council said, and what Miss X said. The Council said Miss X was offered an induction meeting at the school. Miss X said she was not. We could not resolve this discrepancy on the evidence available.
13. B should have started at School D by mid-May 2022. We cannot investigate School D's actions but, given the Council allocated the school place through its fair access protocol, and had concerns about the home education, it should have satisfied itself that B was attending. The fact it did not amounted to fault.

**Complaint (c): there was little help from the home education team or follow up**

14. In February 2022, the home education team determined that the home schooling was unsatisfactory. The Council was mindful of the difficult circumstances Miss X was experiencing at the time, and decided to delay further consideration until May, three months later.
15. We found that, in February 2022, the Council did not consider its duty to provide alternative education and/or whether it should enforce B's attendance at the allocated school. However, we decided that it was very unlikely the Council would have taken enforcement action given Miss X's personal circumstances.
16. We considered that the Council's failure to consider its duty to provide alternative education amounted to fault. In particular, the Council should have decided whether there was a medical reason why B could not attend the allocated school, or whether it was otherwise reasonably practicable for her to attend. The Council agreed with us that, had consideration been given to these factors, it would have provided alternative education to B from March 2022.

**Injustice**

17. Our view was that B had missed out on receiving alternative education from March to July 2022, some four school months. In addition, Miss X had not been provided with a rationale for the fair access Panel's decision and she had been caused unnecessary distress and uncertainty.
18. Miss X applied for a place at her preferred school for September 2022. B gained a place on appeal. That provided a remedy for the substantive part of Miss X's complaint after this date.

**Agreed actions**

19. The Council agreed to carry out the following recommendations within one month of our original decision (by 8 April 2023).

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- To apologise to Miss X and make a symbolic payment of £350 for the avoidable distress and uncertainty that the outcome may have been different but for the faults.
  - To pay £2,400 to Miss X for B's lost education (£600 a month for four school months) which should be used to help B make up the lost education. Miss X should discuss what might be appropriate with B's current school.
  - To remind the home education team that, where home schooling was considered unsatisfactory, it should consider whether enforcement action should be taken to ensure a pupil's school attendance, as well as considering whether it has a duty to provide alternative education.
  - The Council's policy says that the fair access protocol must be transparent and equitable. We recognised that the Panel kept a record of the decisions. But to achieve transparency, we considered that there should be a brief account of how a Panel weighed the balance of all the available information, and why it allocated a particular school. As Council staff attend these meetings, we considered it would be possible for these staff members to make brief notes of the decision making, and therefore would be relatively easy to introduce this change of procedure.
  - We also noted that the Council's policy says there should be an assessment of a pupil's needs. This did not happen in this case. We recommended that the Council should ensure that this aspect of its policy was adhered to by reminding relevant staff of this requirement.
20. On 8 March 2023, we closed the complaint because the Council had agreed to implement the recommendations by 8 April 2023.

#### **Our second investigation - 23 006 024**

21. On 11 April 2023, Miss X told us that she had not heard from the Council about the agreed remedy. We chased up the Council on 13 April and again on 3 May.
22. On 14 July, the Council told us that, in consultation with Miss X, it had agreed to provide tutoring directly up to the sum of £2,400. Miss X, however, told us that she wanted this money directly because she had already employed a tutor for B to help her catch up. And she wanted to continue with this tutor as B had a good relationship with her and was beginning to show improvements in her schoolwork.
23. On 19 July, we told the Council that it had also not provided evidence of compliance with the recommendations to improve the fair access Panel processes.
24. We opened a new investigation. The Council then told us it had written to apologise to Miss X.
25. On 25 July, we wrote to the Council, explaining that the agreed payments should be made directly to Miss X, that the apology letter had misspelt her surname and had other grammatical errors, and that there was no evidence the Council had complied with the two recommendations to improve the fair access Panel. The misspelling of Miss X's name, grammatical errors and the delay in compliance with agreed recommendations compounded Miss X's avoidable distress.
26. On 8 August, the Council told us that, due to procedural errors, it had not made the payment for Miss X's avoidable distress, and apologised and said it would now do so. It also stated that it would pay the £2,400 directly to Miss X, that it would amend the apology letter, and that the home education team would refer

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all pupils to the children missing from education team where it is decided that the home education is unsatisfactory. The Council will then decide either on enforcement action or whether it should provide alternative education.

27. In addition, the Council also stated that minutes would be taken at its fair access Panels of the discussions held and of the rationale for decisions.

## **Conclusion**

28. Where we find fault and make recommendations, we expect councils to carry them out within the agreed timescales. This is important because, until changes happen, other individuals might be caused a significant and unnecessary injustice by the same fault. In addition, the Council's delays in acting on agreed recommendations following our investigation could also undermine public trust in the Council's ability to operate a fair system of redress and causes further avoidable distress to the complainant.
29. The Council agreed to the timescales in our earlier complaint investigation. If a council is aware an action is likely to take longer, we expect it to suggest a different timescale before we finalise a decision. It was fault that it failed to deliver on its commitments.
30. There have been issues with compliance with remedies on another case (23 005 479) and, because of this, we have made recommendations to address the systemic problems in the Council in implementing the recommendations it agrees to.

## **Recommendations**

31. 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)
32. The Council plans to do this in January 2024 and it will share its report with us.
33. The Council has now provided evidence that it has apologised and paid Miss X the required payments.
34. In response to a draft version of this report, the Council has also introduced the following measures to improve its services.
- A new policy on elective home education, where the council asks parents to apply for school places if they are providing unsuitable home education, and are referred to Children Missing from Education and School Attendance officers, if they do not. The team has been restructured with additional staff brought in.
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  - Additional support for parents/carers who want their children to be re-integrated to school.
  - Minutes of decisions at its fair access panel.
  - staff training around principles of good complaint handling.
35. We are pleased that the Council has now taken action to resolve Miss X's complaints.

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## Decision

36. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss X. The Council has provided evidence that it has taken the action previously identified to remedy that injustice.