

23 August 2018

Complaint reference:
18 006 390

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: there is no fault in the Appeal Panel's decision to refuse Mrs M's appeal for a place for her daughter, D, at School B. The Ombudsman cannot question decisions taken without fault.

The complaint

1. Mrs M complains about her unsuccessful appeal for a place for her daughter, D, at School B. Mrs M says the Council gave her incorrect information about the school's catchment area. She complains the Appeal Panel failed to take this into account and based its decision on class sizes instead.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. The Ombudsman cannot question whether a school admission appeal 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 the panel's decision into question, we may ask for a new appeal hearing. (*Local Government Act 1974, section 34(3)*)
3. The Ombudsman's role is to ensure the Independent Appeal Panel followed the Code of Practice issued by the Department for Education, and the hearing was fair. We do this by examining the notes taken by the Clerk during the hearing. We do not have the power to overturn the Panel's decision, and we cannot give a child a place at the school.
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I have considered:
 - Mrs M's comments;
 - all the information presented to the Appeal Panel, the notes taken by the Clerk during the appeal, and the Panel's decision letter following the appeal; and
 - the School Admissions Appeals Code 2012.
6. I invited Mrs M and the Council to comment on my draft decision.

What I found

7. School B is a Community School. The Local Authority is the Admission Authority and is responsible for organising the Independent Appeal.
8. Mrs M applied for a place for her daughter in Reception. Her application and appeal were unsuccessful.
9. The School Admission Appeals Code 2012 issued by the Department for Education sets out the process the Independent Appeal Panel must follow when considering an appeal.
10. The Panel must first consider whether the Council has correctly applied the admission criteria to the application. Mrs M's application was unsuccessful because all the places were allocated to children living in the school's catchment area. Mrs M lives just outside the catchment. The Panel decided the Council had correctly applied the admission criteria.
11. The Panel must then consider whether D's need for a place outweighs the problems an extra child would cause to the school.
12. No more than 30 children can be taught by a single teacher in an infant class (Reception and Years 1 and 2). If this is not possible without reorganisation or employing extra staff, and this would harm the education of other pupils, "infant class size prejudice" rules apply to the appeal.
13. When infant class size prejudice rules apply, the Appeal Panel can only legally uphold an appeal if:
 - a) The child would have been offered a place if the admissions arrangements had been implemented properly;
 - b) The child would have been offered a place were it not for some flaw in the admission arrangements; and/or
 - c) The decision to refuse a place was one which no reasonable authority would have made.
14. The threshold for appeals made under c. above is extremely high. The Panel cannot legally uphold appeals which do not fall into the categories above, no matter how persuasive the appeal otherwise is.
15. The Panel considered whether the infant class size prejudice rules applied to Mrs M's appeal. There will be two classes of thirty children in Reception. The Panel established there are six classes, six classrooms and six teachers at the school. The Panel accepted that employing an additional teacher would prejudice the provision of education and efficient use of resources. The Panel decided, therefore, that infant class size prejudice rules did apply to Mrs M's appeal. This is a decision the Panel can take and there are no grounds for the Ombudsman to question it.
16. The Clerk's notes and the decision letter record Mrs M's discussions with the Panel at the hearing. I can see from the Clerk's notes that Mrs M appealed on the following grounds:
 - She already has a child at the school. She relies on grandparents to take the children to school and they will not be able to take the children to two different schools. Mrs M is unable to change her work arrangements;
 - She has recently moved to a new house. She telephoned the Council in March or April 2017 before moving and was told her new house was in the school's catchment area. When she applied for D's place in November 2017, she discovered it was not. She says she would not have moved if she had been given the correct information. The Council does not have a record of her call because it

only keeps calls for 6 months; and

- D is very shy and Mrs M would like her to stay with the friends she has made at pre-school.
17. The Panel decided that none of these reasons fall under the circumstances in paragraph 13. Therefore the Panel could not legally take them into account when making its decision.
18. The Panel was aware of Mrs M's complaint that the Council gave her incorrect information about the school's catchment area and her reasons for wanting D to attend the school, but because the school was full and the "infant class size rules" applied, the Panel decided her reasons did not meet the extremely high threshold to admit another child. I am satisfied that the Panel properly considered Mrs Y's appeal. There are no grounds for the Ombudsman to question the Panel's decision.

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19. There is no fault in the Appeal Panel's decision. The Ombudsman cannot question decisions made without fault, no matter how strongly Mrs M disagrees. I have ended my investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs Y complains about the actions of a school admissions appeal panel. The Ombudsman finds no evidence of fault in the infant class size hearing for Mrs Y's daughter, X, and we do not uphold the complaint.

The complaint

1. The complainant, whom I will call Mrs Y, complains about the school appeal heard for her daughter, whom I will call X. In particular, she says:
 - twelve children have been allocated places at the school who do not have siblings and are outside of the catchment area;
 - the appeal panel failed to consider the needs of her eldest daughter;
 - the Council's submission to the panel about the places offered contained errors; and
 - the panel failed to act in an independent and fair way.
2. Mrs Y says the alleged fault has caused anxiety and distress, worsened by her existing medical conditions. Mrs Y also claims that X has suffered injustice because she has not been allocated a place at her preferred school.

What I have investigated

3. I have investigated the actions of Nottinghamshire County Council, referred to as 'the Council' in this statement. I have not investigated the actions of Nottingham City Council for the reasons explained at the end of this statement.

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We cannot question whether an independent school admissions 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*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. During my investigation, I have:
 - Considered the information provided by Mrs Y;
 - Made enquiries of the Council and considered its response;
 - Consulted the relevant law and guidance around school admissions and infant class size admissions appeals, particularly the School Admissions Code (2014) and the School Admissions Appeal Code (2012); and
 - Issued a draft decision and invited comments from the Council and Mrs Y. I received none.

What I found

What should happen

7. Independent appeal panels must follow the law when considering an appeal. The law says the size of an infant class must not be more than 30 pupils per teacher. There are only limited circumstances in which more than 30 children can be admitted. There are special rules governing appeals for Reception and Years 1 and 2. Appeals under these rules are known as “infant class size appeals”. The rules say the panel must consider whether:
 - admitting another child would breach the class size limit
 - the admission arrangements comply with the law
 - the admission arrangements were properly applied to the case
 - the decision to refuse a place was one which a reasonable authority would have made in the circumstances.
8. What is ‘unreasonable’ is a high test. The panel needs to be sure that to refuse a place was “perverse” or “outrageous”. For that reason, panels rarely find an admission authority’s decision to be unreasonable.
9. The Ombudsman does not question the merits of decisions properly taken. The panel is entitled to come to its own judgment about the evidence it hears.
10. The School Admissions Code (2014) states that applicants must submit school applications to their home authority, regardless of the location of the preferred school(s). The home authority is where the applicant pays their council tax to:
“Regardless of which schools parents express preferences for, the CAF [common application form] is required to be returned to the local authority in the area that they live (the ‘home’ authority). The home authority must then pass information on applications to other local (‘maintaining’) authorities about applications to schools in their area. The maintaining authority must determine the application and inform the home local authority if a place is available. The offer to parents must be made by the home local authority”.
11. The home authority – which in this case is Nottingham City Council – processes any applications received in accordance with its published admissions arrangements. The authority may decide to treat any applications received after the published deadline as late.
12. Late applications may be considered after all on-time applications. Therefore, an on-time applicant living outside of a school’s catchment area may receive a place over a late applicant living within the area. The home authority’s arrangements state: *“... late applications received after the closing date for places in reception*

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year at infant or primary schools and year 3 at junior schools will be dealt with after 18 April 2017. Under exceptional circumstances the Local Authority may be willing to accept applications which are received late but by no later than ... 5 pm on 17 February 2017 for places in reception year at infant or primary schools and year 3 at junior schools”.

What happened

13. X is due to start school in September 2018. Mrs Y has an older daughter who already attends a school in the Council’s area. This was Mrs Y’s preferred school for X, as she understandably wanted both siblings attending the same school. I will refer to it as ‘the school’.
14. As a resident of Nottingham City Council, Mrs Y was required – according to the Code – to submit her application to that Council before the published deadline of 15 January 2018.
15. Instead, Mrs Y mistakenly submitted her application to the Council on 15 January 2018. This was wrong because the Council is not Mrs Y’s home authority.
16. The day after receiving her application, the Council tried to call Mrs Y to advise that she had applied to the wrong authority. The Council says it was unable to make contact sooner as Mrs Y’s online application had imported overnight. The Council also emailed and wrote to Mrs Y to provide the relevant contact details for her home authority, Nottingham City Council.
17. Mrs Y then correctly applied to her home authority on 25 January; ten days after the deadline. Mrs Y’s home authority categorised her application as late. It passed the preference to the Council for consideration. The Council categorised X as being outside of catchment, but with a sibling in attendance at the school.
18. Had Mrs Y applied to the correct authority on time, X would have received a place at the school. Unfortunately, due to the lateness of the application, Mrs Y’s home authority decided to process X’s school application after all those who applied before the deadline. This meant that X was refused a place at the school.
19. Mrs Y appealed. The school appeal hearing went ahead in June 2018. Mrs Y and X’s father attended.
20. After considering the case put forward, the panel decided not to uphold Mrs Y’s appeal because it felt that X’s case was not exceptional, and so there were no grounds on which to breach the infant class size limit.
21. Dissatisfied with the outcome, Mrs Y appealed to the Ombudsman.

Was there fault in the panel’s actions causing injustice to Mrs Y and X?

22. Mrs Y’s first complaint is that the Council wrongly allocated places to children within a lower over-subscription criterion than X. This is correct, but only because those applicants applied before the deadline. In line with the Council’s arrangements, on-time applicants will be allocated places ahead of those considered late. Whilst unfortunate for Mrs Y and X, this is not fault.
23. Mrs Y also complains that the Council provided incorrect information to the appeal panel. I have considered the submission in question. This provides a breakdown of the offers made to on-time applicants on national offer day. The break down states that 0 children within X’s criterion were refused places at the school. Mrs Y says this is correct, because X did not receive a place and so the number in that column must be wrong.

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24. The breakdown of offers made and places refused refers to on-time applicants only. So, in that context, it is correct to state that the Council did not refuse any applicants in X's criterion. Further down, the document shows that the Council refused five late applicants because all 30 places at the school had already been allocated to those who applied before the deadline. X's application was one of those five. On-time applicants have priority for places. This is not fault.
25. I am satisfied the Council's submission was correct. The panel could establish that, had Mrs Y applied on time, X would have received a place at the school.
26. In terms of the panel, Mrs Y complains that it failed to consider the needs of her eldest daughter who has complex needs. I have considered both the Clerk's notes and the decision letter issued to Mrs Y. These both show the panel did consider the points made about X's sister: *"Medical needs as stands are [sister's] and not [X's] therefore no except circs". "Panel members took into account the information which you had presented, including that [X's] sister who already attends [the school] has complex special needs and you were both able to explain in detail why it would help both of your daughters for [X] to obtain a place at [the school] with her sister". "The panel heard from you how stressful it would be if your daughter were at 2 different schools and how this would impact on [Mrs Y's] health and well-being; you also eloquently explained how this would impact on both of your daughters".*
27. Mrs Y also makes a general complaint that the panel failed to act in a fair and independent way, as required by the Code. However, Mrs Y does not support this statement with any examples or evidence. Having considered the panel's notes in full, I find no evidence of a lack of fairness or impartiality and so I am unable to uphold this part of Mrs Y's complaint.

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28. I have completed my investigation with a finding of no fault for the reasons explained in this statement.

Parts of the complaint that I did not investigate

29. I have not investigated the actions of Nottingham City Council, because it is not the authority complained about. Mrs Y complains about the conduct of the school appeal hearing organised by Nottinghamshire County Council, 'the Council'.
30. The decision to categorise Mrs Y's application for X as late was made by Nottingham City Council. Its arrangements state that it can consider whether there are exceptional circumstances to warrant treating a late application as on-time. I do not know if Nottingham City Council considered Mrs Y's circumstances because I have not investigated the actions of that authority. However, I do note that Mrs Y did not present this as an argument at appeal.
31. I have investigated how Nottinghamshire County Council considered Mrs Y's case. The notes of the appeal show the panel asked Mrs Y about the lateness of her application. It considered the evidence put forward, but decided that X's case was not exceptional. There is no evidence of fault by the panel.
32. However if Mrs Y disputes the decision to categorise her application as late, she would need to make a complaint to Nottingham City Council.

Investigator's decision on behalf of the Ombudsman

28 August 2018

Complaint reference:
18 002 858

Complaint against:
Nottinghamshire County Council

Local Government & Social Care **OMBUDSMAN**

The Ombudsman's final decision

Summary: Mr X complains about the Council's handling of his social care assessment in 2016 and its decision to seek repayment of ineligible travel costs and expenses he incurred. It is too late for the Ombudsman to investigate now the Council's handling of the care assessment and as there is no evidence of fault in the way the Council has sought repayment of the costs, the Ombudsman will not investigate this matter any further.

The complaint

1. Mr X complains about the Council's handling of his social care assessment in February 2016 and its decision to seek repayment of ineligible travel costs and expenses incurred between March and June 2016. As he did not accept the outcome of the first care assessment, and only accepted the reassessment completed three months later, he should not have to pay the money back to the Council.

What I have investigated

2. I have investigated the part of Mr X's complaint about the Council's demand for repayment of the travel costs and expenses. The last paragraph of this statement explains why I have not investigated the part of his complaint about the way the Council carried out his care assessment in February 2016.

The Ombudsman's role and powers

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. We must also consider whether any fault has had an adverse impact on

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the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:

- it is unlikely we would find fault, or
- the fault has not caused injustice to the person who complained, or
- the injustice is not significant enough to justify our involvement, or
- it is unlikely we could add to any previous investigation by the Council, or
- it is unlikely further investigation will lead to a different outcome, or
- we cannot achieve the outcome someone wants, or
- there is another body better placed to consider this complaint, or
- it would be reasonable for the person to ask for a council review or appeal.

(Local Government Act 1974, section 24A(6), as amended)

6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. *(Local Government Act 1974, section 30(1B) and 34H(i), as amended)*

How I considered this complaint

7. In considering the complaint I spoke to Ms B, Mr X's representative, and reviewed the information she provided, including the Council's responses to her complaint. I also spoke to a Council officer who was involved with the case. Both Ms B and the Council were given the opportunity to comment on my draft decision.

What I found

8. Ms B acts as the representative for her disabled son, Mr X, who is eligible for social care services, and on whose behalf she receives Direct Payments. These are monetary payments made by the Council to meet Mr X's eligible care and support needs.
9. In February 2016, the Council carried out a review of Mr X's care and support needs and as part of this review it looked at his use of Direct Payments. It found Ms B had been using Mr X's Direct Payments to pay for travel costs and expenses which were not eligible to be covered under the Council's Direct Payment policy. The Council says it made its position about the ineligibility of these costs clear to Ms B at this time, during a meeting, in a telephone call and in writing in the Review of Care and Support Assessment for Mr X dated 8 February 2016. Ms B says her recollection is that the matter was only vaguely mentioned in a meeting and that no mention of it was made in the telephone call.
10. Ms B did not accept the outcome of the February assessment which reduced the care provision and direct payment for Mr X. She complained it had not been carried out in accordance with the Care Act 2014.
11. The Council agreed to carry out a re-assessment. This took place in May and while it did result in a reduction in the Direct Payment for Mr X, it did so to a lesser extent than the February assessment. Ms B told the Council she accepted the outcome of the reassessment and the Direct Payment was altered from June 2016.
12. In 2017 the Council sought to recover the travel costs and expenses incurred by Mr X between March and June 2016 for which Direct Payments should not have

been used. The Council told Ms B it had been made clear to her during the 2016 February review that these costs could not be covered by Mr X's Direct Payments.

13. In 2018 the Council continued to follow up repayment of these outstanding costs which stood at £935. Ms B complained that Mr X should not have to pay the money back because the outcome of the February 2016 assessment had not been agreed or accepted and she had not formally been told of the reduction to his Direct Payment until the re-assessment.
14. The Council responded to her complaint about the matter by explaining that, while it had accepted that in relation to the 2016 February assessment "certain aspects of the review process were not followed correctly", staff had complied with the Care Act 2014, and that Ms B had been advised about the reduction in Mr X's Direct Payment and the reasons for it on a number of occasions from February 2016. It noted that while Ms B acknowledged Mr X owed the money but felt that he should not have to pay it back, it did not share her view and declined to waive the amount owed.

Analysis

15. Prior to the February 2016 care assessment, Ms B, on Mr X's behalf, used Direct Payments to cover ineligible travel costs and expenses. The Council accepted it had failed to make clear to her earlier that the Direct Payments could not be used in this way. However, when carrying out its February review it found out what had been happening and told her these costs could not be covered by Direct Payments. Up until this time, therefore, Mr X had had the benefit of the Council's lack of awareness about the ineligible use of the payments.
16. Had the February 2016 care assessment not been the subject of a review, Mr X would have been in the same position as he still would not have been able to use Direct Payments to cover the ineligible travel costs and expenses. I see no fault by the Council in seeking repayment of the costs and no grounds to propose it waive them.

Final decision

17. There is no evidence of fault in the way the Council has sought repayment of the ineligible travel costs and expenses and the Ombudsman will not investigate this matter any further.

Parts of the complaint that I did not investigate

18. The restriction highlighted at paragraph 3 applies to the part of Ms B's complaint about how the February 2016 assessment was carried out and I see no grounds which warrant exercising discretion to investigate it now.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate Mr X's complaint about the Council's decision to install a barrier to restrict vehicular access to a public bridleway. It is unlikely we would find fault by the Council causing Mr X significant injustice.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains the Council has installed a barrier across a bridleway leading to his property.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

3. I reviewed the information provided by Mr X, including the details of his complaint and the Council's responses. I shared my draft decision with Mr X and considered his comments.

What I found

4. Mr X lives on a private road. The road is accessible via narrow lanes to the East and West and by passing along a public bridleway. Bridleways are not open to vehicular traffic and should be used only by pedestrians, cyclists and people on horseback.

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5. Following complaints from bridleway users the Council installed a barrier preventing vehicular access for reasons of highway safety. Mr X complains about this and says that the barrier traps residents and visitors including delivery drivers, tradesmen and taxi drivers. He also complains it has caused issues for emergency services vehicles including ambulances and fire trucks. He believes the Council should reclassify the bridleway and open the road to through-traffic.
 6. The Ombudsman will not investigate this complaint as it is unlikely we would find fault by the Council causing Mr X significant injustice. The Council is under no obligation to reclassify the bridleway at Mr X's request and has taken action to restrict vehicular access for safety reasons as permitted by the Highways Act 1980.
 7. The Council has invited Mr X to provide any evidence to show he has a lawful right of vehicular access over the bridleway but Mr X has not been able to provide this. Without a lawful right of access over the bridleway we cannot say Mr X (or any delivery drivers, tradesmen or taxi drivers, etc) are entitled to drive vehicles over the bridleway or that they have suffered an injustice from the Council's decision to erect the barrier.
 8. Mr X has also raised concerns about access for emergency services vehicles but the Council has explained it has received no correspondence about the issue from the services. It has also changed the barrier to make access easier for these vehicles. If Mr X remains concerned about this issue he may wish to raise the matter with the emergency services who can then contact the Council directly.

Final decision

9. The Ombudsman will not investigate this complaint. This is because it is unlikely we would find fault by the Council causing Mr X significant injustice.

Investigator's decision on behalf of the Ombudsman

20 September 2018

Complaint reference:
18 005 654

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mr C complains that an admissions appeal panel unfairly refused his appeal against a school's refusal to grant his son a place. The panel decided the appeal fairly.

The complaint

1. The complainant, Mr C, says an admissions appeal panel hearing his appeal for his son to attend a school in the Council's area ('the school') did not consider the appeal fairly. He says it bore in mind irrelevant matters and incorrect information.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I spoke to Mr C and considered the information he provided. I wrote to the Council and asked for further information. I weighed the evidence and made my decision.
5. I sent copies of my draft decision to Mr C and the Council and invited comments.

What I found

What should happen

The School Admissions Code

6. Every state school in England must publish a Published Admission Number for every year each year. The PAN number is the number of children the school should ideally have in each year and when the PAN is reached, the

school is at capacity. If a child applies for a place and the PAN has not been reached for the relevant year, the school must offer the child a place.

7. However, many schools are oversubscribed and so must find a way of allocating available places fairly. Schools must, therefore, have an oversubscription policy allowing them to decide who should be awarded available places.
8. From Year 3 upward, even if the PAN would be exceeded, schools must still offer a place to an applicant unless they can show that to do so would result in prejudice to the education of the existing students.

The school's oversubscription criteria

9. Where demand exceeds the total number of places available, the school allocates places in the following priority:
 - a) Children looked after by a local authority and previously looked after children.
 - b) Children from the catchment area with a brother or sister at the school.
 - c) Other children who live in the catchment area.
 - d) Children from outside the catchment area with a brother or sister at the school.
 - e) Other children from outside the catchment area.
10. In the event of over-subscription, preference will normally be given to children who live nearest to the school as the crow flies.

Appeal procedure

11. When a school refuses to offer a child a place, the parents can appeal against the decision to the independent school admissions appeal body.
12. The appeal follows a two-stage procedure. It must first consider whether the admission of further children to the school would prejudice the provision of education to existing students and must uphold the appeal if it finds it would not.
13. If it finds that it would, it must proceed to stage 2 and consider whether the appellant's circumstances justify granting a place. It then allows or dismisses the appeal. This decision is made at the panel's discretion. If

What happened

14. In early 2018, Mr C applied for his child, X, to join the school in Year 3. Mr C said that, for family reasons, it would be helpful if X could join the school.
15. X did not receive a place. The Council said this was because *'there were more applications than places available and other children had higher priority within the admission oversubscription criteria.'*
16. Mr C appealed. At the appeal, the Council said the school's PAN was 45 and the school would have 45 children in Year 3 in September 2018.
17. It said X's admission would prejudice the education of existing pupils because:
 - a) Space was limited;
 - b) There were already excessive student numbers and in Year 3; and
 - c) The school would be losing a further teacher in 2019/20 which would put further pressure on the school's resources.
18. The panel accepted the Council's arguments.
19. Mr C set out his family circumstances which, he said, justified allowing the appeal

and admitting X. The panel listened to Mr C's submissions. The panel then decided not to allow the appeal because the prejudice to X did not outweigh the prejudice that would be caused to the school.

20. Shortly after the appeal, Mr C met the headteacher of the school and talked with her. He says she told him that she would have been happy to have X at the school and that, so far as she knew, the school would not be losing a teacher.
21. Mr C complained to the Ombudsman. He said:
- a) The Council presenting officer at the appeal had spent a great deal of time talking about the number of students in Year 2, which was irrelevant as his child had applied to Year 3; and
 - b) The Council officer had said that the school would be losing a teacher which, he had learnt, was not true.

Was there fault causing injustice?

22. Mr C has very good reason for wanting X to attend the school which go beyond the fact that it is rated outstanding. For family reasons, he says, it would be helpful for X to do so. I do not doubt that this is the case. However, schools admissions appeals have little room for considering such factors.

Conduct of the appeal

23. The appeal was conducted in accordance with the guidance. Relevant matters were considered. The school is above PAN and the Council believes that to admit more pupils would prejudice the standard of education at the school. It therefore opposed X's admission. The panel accepted this and did not find Mr C's family circumstances were sufficient to justify allowing the appeal.
24. Mr C disagrees with this. He believes that the Council's duties under the Equalities Act mean that the appeal should have been allowed.
25. This was a matter for the panel to consider. It did so fully. Mr C set out his arguments but the panel did not feel they justified allowing the appeal.
26. In the circumstances, therefore, providing the information considered by the panel was correct, the Ombudsman cannot find fault with the decision.
27. Mr C says the Council's representative at the appeal referred to the pupil numbers in Year 2, not Year 3. However, notes taken by the clerk to the appeal show that the representative was referring to Year 2 from the 2017-18 academic year, which would become Year 3 in the 2018-19 academic year and there would impact on the provision in 2019/20 school year as the year group the appeal was for would be part of the mixed age classes. This was, therefore, a relevant consideration. I do not find fault.

Headmistress's involvement

28. Mr C also says that, in the light of his conversation with the headteacher, he believes that the Council presented incorrect information about the loss of a teacher in 2019/20.
29. I asked the Council to make enquiries about this. The Council sent me a letter from the headteacher which says she may have given Mr C a false impression as had not fully understood the admissions criteria. She apologised for any misunderstanding. The Council did, therefore, I find, consider all the relevant information. I do not find fault.

Injustice

30. Mr C says that the impact of his child not joining the school has been '*massive*'.

This was not a matter for the panel which had to deal with the issue of prejudice to other students. The Ombudsman can only consider injustice where there is fault and, here, there was none.

Draft decision

31. I have found that the Council was not at fault. The panel correctly considered all the appeal criteria and made a decision open to it on the facts. I have closed my investigation.

Investigator's decision on behalf of the Ombudsman