

APPENDIX 1

Report

on an investigation into
complaint no 07/C/03447 against
Wirral Metropolitan Borough Council

10 April 2008

Investigation into complaint no 07/C/03447 against Wirral Metropolitan Borough Council

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Key to names used

Mr H - the Complainant

S - the Complainant's Son

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.

This report has been produced following the examination of relevant documents.

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

Special Educational Needs

The complainant won an appeal to a Special Education Needs and Disability Tribunal about the secondary school to be named in his younger son's Statement of Special Educational Needs. Almost immediately afterwards Wirral Metropolitan Borough Council's Education officers became suspicious that the complainant's family were not actually living at the property they owned in the Council's area. The Council refused to take responsibility for the younger son's education. The complainant provided full information about his circumstances and living arrangements to the Council Tax Service which accepted that the family were using their Wirral property as their main residence. When the Council's Legal Department subsequently made enquiries of the complainant he declined to send it the same information but twice directed it to the Council Tax Section. The legal department did not contact the Council Tax Section and the Education Service continued to refuse to take responsibility for the boy's education.

The Council would not accept responsibility for the boy and did not comply with the law until the Ombudsman began her enquiries. As a result, the boy lost almost a year of education at the school as specified in his Statement of Special Education Needs, his parents paid for private tuition and experienced stress and anxiety in trying to resolve the issue.

Finding

Maladministration causing injustice.

Recommended remedy

To remedy the injustice the Council should now:

- accept that it has no justification for its claim not to be responsible for S;
- discuss and agree with the school and S's parents whether there is any additional provision that could be made to help S 'catch up' on the year's schooling that he has missed;
- reserve a sum of money equivalent to the cost of educating S at the school for a year in a fund until he has completed year 11 and then deploy the fund on any additional educational provision that the school and an educational psychologist recommend as being beneficial;
- pay £1,000 to Mr H in recognition of the anxiety, stress, time and trouble caused to him; and

- in addition, the Council should also make a payment of £655 to Mr H to reimburse what he paid for private tutoring for S during 2007.

Introduction

1. Mr H complains that Wirral Council:
 - did not comply with a Special Education Needs and Disability Tribunal (SENDIST) decision that his younger son, S, should attend a mainstream secondary school in its area.

My enquiries revealed that the Council had refused to allow S to attend the school named in his Statement of Special Education Needs because of a dispute over whether Mr H's main residence is in the Wirral area. As a result, S was deprived of full-time education from October 2005 to November 2006.

What happened

2. Mr H's younger son, S, has a Statement of Special Education Needs. From June 2004 a mainstream primary school was named in his Statement. From September 2005 Mr H agreed that S would attend the primary school for one day a week and a local residential specialist school for the remaining four days a week. The place at the specialist school was for a period of 38 weeks with an initial assessment period of six weeks. In October Mr H withdrew his son from the specialist school because the boy was unhappy. The Head Teacher of the mainstream primary school refused to have S back full time unless his parents agreed to certain conditions. As a result, apart from a few weeks of half days at a hospital school, S did not attend school for most of his last primary school year and received no other education from the Council. Mr H appealed unsuccessfully to a SENDIST about the

primary school's conditions. I do not, therefore, have jurisdiction to investigate issues about S's primary school education¹.

3. In February 2006, the last year of S's primary education, the Council issued a proposed Statement but would not name a mainstream secondary school. It issued a final Statement in July 2006 naming a specialist secondary school and not Mr H's preferred school. Mr H's preferred school was close to the

¹ Section 26(6) of the 1974 Local Government Act says that the Ombudsman should not conduct an investigation into '...any action in respect of which the person aggrieved has or had a right of appeal, reference to or review to or before a tribunal...'

grammar school that his elder son now attends.

4. Mr H appealed to a Special Education Needs and Disability Tribunal about the content of S's statement and the school that was named. In November 2006 the Tribunal's decisions included a ruling that the Statement should name the school

preferred by Mr H. The Council issued a Statement in December 2006 naming the school and providing for S to receive:

- full time support from a Learning Support Assistant
- the use of a key worker
- the opportunity for regular small group tuition
- an assessment by an occupational therapist and physiotherapist within two months with the delivery of such programmes as they recommend
- opportunities to develop social skills as well as an assessment by a speech and language therapist within two months with the delivery of any programme recommended.

5. At about this time Council staff began to question whether Mr H and his sons lived at the address he had given in its area. Mr H also owned a property in the area of a Welsh local authority. Council Tax records showed that Mr H had paid Council Tax at a discounted rate since 2005. A Senior Officer from the Education Service visited and decided that the Wirral property was uninhabited. The Officer then wrote to Mr H saying that he was not satisfied that Mr H had been living at the address since 2005 and, because Mr H was not resident in the Council's area, it was not responsible for S's Statement of Special Education Needs. The letter advised Mr H that he should contact the Welsh authority and that the Council would forward the documentation about S to that authority.

6. Mr H then provided information to the Council's Council Tax section about his two properties and explained that his arrangements arose from having building work done on the Wirral property. He recorded that his main home was now the Wirral property but had been the Welsh property temporarily before. The Council told him that it had decided that his Wirral property had not been his main residence until 8 December 2006 and that he would be charged the full rate for Council Tax from that date.

7. Meanwhile, the Senior Officer from the Education Service asked the SENDIST to review its decision and was told at the end of January 2007

that a review was not possible in the circumstances and the issues raised were for the Council to resolve locally.

8. The Council's legal department then wrote to Mr H asking him to confirm the dates that he had been living in its area and to provide evidence that it was his main home. Mr H tells me that he declined to do this because he had already provided information to the Council Tax service and it had accepted that he was residing at his Wirral property from 8 December 2006.
9. Early in March 2007 the Council wrote to the Welsh local authority with a copy of S's Statement saying that Wirral Metropolitan Borough Council was no longer responsible. The Welsh authority asked Mr H not to contact its education service until the matter of his residency had been agreed between himself and Wirral.
10. Wirral Metropolitan Borough Council's legal department wrote to Mr H again as it he had not responded to the January letter. The Council says that as it received no response to either of its legal department's letters it concluded that Mr H was not resident in the Wirral area and that it was, therefore, not responsible for S's education.
11. S began attending the secondary school named in his statement on 28 November 2007 after I began my enquiries.

Findings

12. The Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 require a LEA to provide a child's parents with a completed Statement and information on their right to appeal within eight weeks of serving a proposed statement. Wirral Metropolitan Borough Council issued a proposed Statement in February 2006 and did not

provide S's final Statement until July 2006. The statutory exceptions in Regulation 17(4) (c) and (d) did not apply and the failure to provide the Statement within eight weeks was maladministration that caused injustice to Mr H (and to S) by delaying his opportunity to appeal to a SENDIST. The result was that S could not begin his secondary school education until November 2006 at the earliest.

13. The Council complied with the law² in amending S's Statement of Special Education Need and naming the mainstream secondary school as ordered by the SENDIST.

² Education (Special Educational Needs) (England) (Consolidation) Regulations 2001

However, it then failed to arrange for S to be admitted to the school and to receive the educational provision specified in the Statement.

14. Section 324 (5) of the 1996 Education Act says that where an LEA is responsible for a Statement of Special Education Needs:

(a) unless the child's parent has made suitable arrangements, the authority -

(i) shall arrange that the special educational provision specified in the statement is made for the child, and...

(b) if the name of a maintained, grant-maintained or grant-maintained special school is specified in the statement, the governing body of the school shall admit the child to the school.

15. Section 321 of the 1996 Education Act says that an LEA is responsible for a child '*...if he is in their area...and has been brought to their attention as having...special educational needs...*' From December 2006 the Education Service claimed that S was not in its area and that it, therefore, had no responsibility for him. Meanwhile the Council Tax service had confirmed that Mr H had paid full rate council tax since December 2006; and his older son was attending a grammar school in the Wirral area.

16. Mr H directed the Council's legal department to its Council Tax section and the very full information he had provided to it. It is unfortunate that he chose not to respond to the legal department's subsequent request to confirm the dates that he had lived at each property and for evidence that the property in Wirral had been his main or principal home. If he had engaged constructively with the Council the issues may have been resolved sooner. However, there is no evidence that, having been told that relevant information had already been provided, the Council took any steps to properly consider that information. The Council's focus should have been on S's welfare and education and Mr H's own

actions do not excuse its failures and maladministration.

17. As a result of the Council's actions S has missed a year's attendance at the secondary school that the SENDIST ordered should be named in his Statement. A reasonable authority would have placed prime importance on the child's welfare; supported S's admission to the school; fully considered all the information available to it; made enquiries of Mr H and then, if necessary, worked to establish which LEA was responsible for S. No reasonable authority would have relied on such insubstantial information to make decisions about a

vulnerable child as the Council has about S. The Council has acted with maladministration.

Conclusion

18. The Council's maladministration has caused serious injustice to S in the loss of education at the school named in his Statement of Special Education Needs. It has also caused injustice to Mr H and his wife who have had to educate S themselves and who have experienced considerable additional stress and anxiety. S is now attending the school named in his statement.

19. To remedy the injustice the Council should now:

- accept that it has no justification for its claim not to be responsible for S;
- discuss and agree with the school and S's parents whether there is any additional provision that could be made to help S 'catch up' on the year's schooling that he has missed;
- reserve a sum of money equivalent to the cost of educating S at the school for a year in a fund until he has completed year 11 and then deploy the fund on any additional educational provision that the school and an educational psychologist recommend as being beneficial;
- pay £1,000 to Mr H in recognition of the anxiety, stress, time and trouble caused to him; and

- in addition, the Council should also make a payment of £655 to Mr H to reimburse what he paid for private tutoring for S during 2007.

**Local Government
Ombudsman
Beverley House
17 Shipton Road
York
YO30 5FZ**

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