

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

**Investigation into a complaint against
Leeds City Council
(reference number: 18 011 706)**

10 July 2019

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

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

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

Mrs X	The complainant
Y	Her daughter
Officer H	School A's Learning Mentor

Report summary

Education: Alternative Provision

Mrs X complained the Council failed to provide education to her daughter Y when she refused to go to school because of high levels of anxiety.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- pay Mrs X £1,300 to cover the costs of education that she has had to arrange for Y between October 2018 to January 2019;
- pay Mrs X £1,400 to remedy the Council's failure to assess Y's needs and provide education between May 2018 and October 2018, which once offered, she engaged in. Mrs X may use this as she sees fit to meet Y's educational, social and mental health needs; and
- pay Mrs X £200 to remedy the time and trouble taken in bringing the complaint to the Council and to us.

In addition to this, the Council should also:

- review the way it oversees services for children and young people out of school to ensure it discharges its responsibilities for alternative provision under section 19 of the Education Act 1996;
- provide training and guidance to Council staff, schools and services commissioned to provide alternative education to explain the Council's role and how it will work in practice following the review;
- have a policy in place for Children Missing Education for medical needs which has full regard to current guidance and legislation; and
- review the educational provision in place for children of compulsory school age who are on roll but have not attended school for more than 15 school days and where alternative provision is not being supplied, to ensure there is an assessment of their educational needs and how these are being met.

The Council should provide us with evidence of how it has completed these 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 complaint

1. Mrs X complained the Council failed to provide alternative education to her daughter Y, after she stopped attending school in March 2018. Mrs X said Y was not able to attend school because of anxiety. As well as missed education, Mrs X said the lack of schooling has impacted on Y's social and emotional wellbeing. She said she had to reduce her working hours to support Y at home.

Relevant law and guidance

The Ombudsman's role

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 may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

Alternative education

4. Under section 19 of the Education Act 1996, councils are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
5. The Children, Schools and Families Act 2010 clarified that a suitable education meant a full-time education. The only exception to this is where the physical or mental health of the child means that full-time education would not be in their best interests.
6. The Government's statutory Guidance '*Ensuring a good education for children who cannot attend school because of health needs*' outlines councils' responsibilities towards children with medical health needs. It states that councils should:
 - have a written, publicly accessible policy statement which explains how it will meet its legal duty towards children with additional health needs. This policy should make links with related services in the area, such as the Special Educational Needs and Disability Service and Children and Adolescent Mental Health Service (CAMHS);
 - have a named officer responsible for the education of children with additional health needs, and parents should know who that person is; and
 - not "*have processes or policies in place which prevent a child from getting the right type of provision and a good education*" or "*inflexible policies which result in children going without suitable full-time education*".

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7. Councils should provide education as soon as it is clear the child will be away from school for 15 days or more and where suitable education is not being provided by the school.
 8. Once a council has identified a child needs alternative education, it must arrange this as quickly as possible. If the medical evidence is not quickly available, the guidance states “*LA’s should consider liaising with other medical professionals, such as the child’s GP, and consider looking at other evidence to ensure minimal delay in arranging appropriate provision for the child*”.
 9. The statutory guidance ‘*Alternative Provision*’ says the duty to provide a suitable education applies “*to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend*”.
 10. We issued a focus report in September 2011, amended in January 2016, “[Out of sight... out of mind?](#)”. This gives guidance for local authorities on how we expect them to fulfil their responsibilities to provide education for children who, for whatever reason, do not attend school full-time. The report made six recommendations for Local Authorities, including they:
 - consider the individual circumstances of each case and be aware that a council may need to act whatever the reason for absence (with the exception of minor issues that schools deal with on a day-to-day basis) even when a child is on a school roll;
 - consult all the professionals involved in a child's education and welfare, taking account of the evidence in coming to decisions;
 - choose, based on all the evidence, whether to enforce attendance or provide the child with suitable alternative education;
 - adopt a strategic and planned approach to reintegrating children back into mainstream education where they are able to do so; and
 - put whatever action is chosen into practice without delay to ensure the child is back in education as soon as possible.
 11. Our focus report states local authorities should not assume that schools shoulder the entire responsibility for a child’s education.

Early help

12. In Leeds, the Council organises its targeted support services through twenty-five clusters (covering small areas of the city). Clusters bring together managers from children’s services in each local area, including schools, children’s centres, police and social work. The aim is to link schools and early year providers with social and health support for children and their families.
13. Clusters hold guidance and support meetings. These are meetings where people from the services outlined above, come together to discuss cases of families they are working with where additional support from other agencies might be needed to help the case progress. Clusters often work with families through an early help plan. Early help plans involve the family and services coming together, to look at the strengths and difficulties the family has and the outcomes they want to achieve. This process is led by a lead practitioner.

Educational support and alternative provision

14. Running alongside clusters, the Council has created five Area Inclusion Partnerships. These are partnerships of schools who are responsible for

supporting pupils with social, educational and mental health needs who may have challenging or disruptive behaviours. Area Inclusion Partnerships provide services including outreach support for individual pupils and managed moves between schools. They provide alternative provision for pupils who are at risk of exclusion from school, or who have been excluded.

15. For pupils who are not able to attend school because of a medical need, the Council commissions services from the Medical Needs Teaching Service (the Service). The Service provides education in three ways: at Leeds Children's Hospital; at a CAMHS in-patient unit; and through an education centre - for those pupils who cannot access mainstream education because of a medical or mental health need. To access the education centre, the pupil's school makes a referral which must be supported by medical evidence provided by a suitable medical professional, such as the child's consultant. Admissions to the Service are agreed by a panel who sit fortnightly.
16. For pupils who are not able to attend school for reasons other than illness or injury, the Pupil Tuition Service provides educational sessions one-to-one. This might be for pupils who have stopped engaging with education or are pregnant or on maternity leave. This service provides a minimum of five hours of education a week.

How we considered this complaint

17. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.
18. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
19. 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.

What we found

What happened

20. At the start of 2018, when Y was 10 and at primary school, she became increasingly anxious about going to school (School A). Mrs X said this was because of bullying. School A offered Y extra support to manage her anxieties, but they got worse to the extent Y became so distressed when going into school she would not be able to settle once inside.
21. On 28 March 2018, School A asked Mrs X to take Y home because she was so distressed. It suggested Mrs X get support for Y from the doctor. Mrs X saw the doctor who referred Y for mental health support. This referral was passed to the local cluster (the Cluster). Mrs X also paid for Y to see a private psychologist.
22. School A's term ended in March and the Summer term started in mid-April 2018. Y did not return. Mrs X visited School A and explained Y was too anxious to return. School A agreed to authorise Y's absence as illness. Mrs X asked School A to send work home which she could complete with Y.
23. School A made a referral to the Cluster for help with Y's social, emotional and mental health needs, with the aim to get Y back into education. The Cluster assigned Y a Family Support Worker as the lead professional. The Cluster held a

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- guidance and support meeting at the start of May 2018. It agreed School A would contact the private psychologist that was working with Y to agree a plan for her return. Once the plan was in place, School A would treat any further absence as unauthorised unless Y had a sick note.
24. Mrs X contacted the Council's Special Educational Needs and Disability Information Advice Support Service (SENDIASS) on 10 May 2018. At this point, Mrs X had stopped trying to complete the work being sent home by the school with Y because Y would become too upset. Mrs X explained to SENDIASS she had been referred to the Cluster but there was not an offer of services to support Y, who had been out of education for four weeks. SENDIASS assigned an officer to Y's case.
 25. The first early help meeting was not held until 27 June 2018. It was delayed from May because of the SENDIASS officer's availability. At this point Y had been out of education for 10 weeks. The meeting was attended by Mrs X, the Family Support Worker and School A. In this meeting Mrs X explained Y had stopped seeing the psychologist and refused to go to the doctors. The meeting agreed:
 - to refer Y for counselling provided through the Cluster, however this was not likely to start until November 2018 because of the waiting list;
 - for Mr and Mrs X to consider which school they would like Y to go to, if she did not want to return to School A;
 - for a staff member from School A to visit Y; and
 - for School A to arrange an educational psychologist's meeting with Mr and Mrs X.
 26. School A referred Y to the Medical Needs Teaching Service for 25 hours a week of education. The panel rejected the referral for Y because she was not receiving therapeutic support and as there was no plan in place to get Y back into a mainstream school.
 27. On 10 July 2018, Mrs X contacted the Council's Attendance Service. She told them Y had not been in school since Easter because of mental health difficulties and explained the Service had not accepted the referral. The attendance officer agreed to contact the services involved in Y's case and said they would get back in touch with Mrs X to provide her with advice.
 28. On 11 July 2018, School A's learning mentor, Officer H visited Y at home. During this visit, Y became aggressive and assaulted Officer H and Mrs X. Officer H contacted the Council's social care advice service. It advised Officer H not to complete any further home visits on their own. A joint visit was arranged with the Family Support Worker for two days later.
 29. During the visit on 13 July 2018, Y became highly distressed and attacked Mrs X. Mrs X took Y to the doctors where she was referred to the hospital. Y was kept in overnight for an assessment and an urgent referral was made to CAMHS. The Family Support Worker contacted the Council's Attendance Officer to make them aware of the incident and to share their concerns about the behaviour they had witnessed.
 30. The following week, the second early help meeting was held. Mrs X told the meeting she had started the in-year application process for Y to move school as they did not want Y to return to School A. The meeting agreed School A would make a new referral to the Medical Needs Teaching Service in September. It was hoped this referral would be supported by CAMHS following Y's recent referral to

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- it. School A also agreed to arrange for Mr and Mrs X to meet the Council's Educational Psychologist.
31. On 27 July 2018 Y went to CAMHS but would not take part in the session. The CAMHS worker agreed to work with Mr and Mrs X.
 32. Mr and Mrs X and School A met the Educational Psychologist for a consultation in September 2018. The Educational Psychologist advised School A to contact the Council's Area Inclusion Partnership, to see if it could arrange alternative education for Y. The Educational Psychologist also suggested non-academic learning opportunities that might be suitable for Y- this included Placement B.
 33. As of 14 September 2018, the School started to record Y's absence as unauthorised because it had not received any medical evidence to say Y was unfit to attend.
 34. On 17 September 2018, Mrs X complained to the Council that it had failed to provide Y with a suitable education.
 35. On 19 September 2018, the Medical Needs Teaching Service refused the School's second referral to educate Y. It stated it did not have medical evidence Y was not able to attend school as she was refusing to engage with CAMHS. The panel recommended Y's case be taken to the Area Inclusion Panel to support Y to transition to a new school.
 36. The Council responded to Mrs X's complaint on the 25 September 2018. In this letter, the Council stated:
 - the duty for the Local Authority to provide education was directly linked to having medical evidence from a medical consultant or CAMHS practitioner that a young person is unable to access education because of illness;
 - there was no duty for the Local Authority to provide education when Y stopped attending school because of anxiety as she was on the school's roll and was being marked as an authorised absence because of illness; and
 - the Council's pupil tuition team may be able to offer up to five hours of education a week and for Y's school to apply for a place.
 37. In the early help meeting held 27 September 2018, Mrs X was not happy Y was still out of education. She advised there were no spaces in other state schools and as parents, they were now looking at private education. School A advised it had spoken to the Area Inclusion Partnership for advice, and it had suggested School A referred Y to the Council's Pupil Tuition Service for educational support.
 38. Mrs X sent a second stage of complaint to the Council. She outlined the Council's responsibilities to provide education to children not able to go to school because of ill-health.
 39. Y started a youth development programme at Placement B at the start of October 2018. She remained on roll at School A. Placement B focussed on building Y's confidence and communication skills whilst teaching her to care for animals. Placement B was privately arranged and paid for by her parents. Between October 2018 and January 2019, Mrs X paid £1,300 for Y to go to Placement B.
 40. At the early help meeting held in October 2018, School A said it had been advised the Pupil Tuition Service could provide up to five hours of education a week, however this was dependent on Y being reintegrated into a state school and there being a clear plan to move on in place. The Council's attendance officer advised

that whilst Y remained on roll at School A, it could choose not to follow legal action if Y planned to reintegrate there. If the plan was for Y not to reintegrate, the School should follow its usual attendance process.

41. On 25 October 2018, the Council sent Mrs X its final response to her complaint. The Council advised School A had offered significant support including the option of a reduced timetable in school; sending school work home; a visit by Officer H; and for Y to move to a different class in the year group. It advised as there was no medical evidence Y could not attend school there was no obligation for the Council to provide alternative education. It stated that suitable, full-time education was available at School A.
42. At the early help meeting held in November 2018, School A stated it had got advice from the Area Inclusion Partnership and that Mrs X had two options. Either reintegrate Y back into School A with support of Placement B, or electively home-educate Y. Mrs X advised it was not appropriate to home educate and that SENDIASS were supporting them in accessing an Education, Health and Care Plan assessment for Y.
43. In December Y started to engage with CAMHS. CAMHS advised the Cluster that Y appeared to have sensory processing difficulties and it was recommending an assessment for Autism.
44. On 17 December 2018, Mrs X returned to the doctor who provided a sick note for Y stating she was not able to attend school because of panic and anxiety. The School began to authorise Y's absence again.
45. On 19 December 2018, the School made a third referral to the Medical Needs Teaching Service. It requested Y receive five hours of education a week. At the start of January 2019, the Service accepted this referral as she was engaging with CAMHS. Y started to access education as of 1 February 2019.

The Council's response

46. The Council does not have a policy for children missing education because of medical needs. In response to our enquiries it advised it uses the Department for Education's statutory guidance, '*Ensuring a good education for children who cannot attend school because of health needs*'.
47. The Council stated that the early help plan led through the Cluster was the most appropriate route for Y to get help with her education once she stopped attending school. It said clusters use a restorative practice approach which, in most situations, has helped pupils successfully reintegrate back into school. The Council accepts there was drift in Y's case and alternative arrangements for her education were not put in place soon enough. The Council said it has started a review of its early help processes in response to this report to ensure the clusters' responsibilities and escalation routes are clear.
48. The Council said it did not have any reason or medical evidence that the integrated offer of support between the school and cluster was not meeting Y's educational needs. It said the statutory guidance states "*there will be a wide range of circumstances where a child had a health need but will receive suitable education that meets their needs without the intervention of the LA*". This includes where a school has arranged to deliver suitable education outside of the school.
49. We welcome feedback from the Council that it is working with schools and wider stakeholders, to implement its new strategic plan, the Three A's – attend attain, achieve. It is also developing computer technology that will allow schools to

provide it with immediate information about pupil's school attendance and exclusions. The Council is also further developing its early help services after receiving a financial award from the Department for Education's Social Care Innovation Programme.

Conclusions

50. The Council does not have a policy in place for children missing education because of ill-health. It told us it uses the statutory guidance. The statutory guidance says councils should have a policy to show how different services will work together to meet pupils needs. As this is statutory guidance we would expect the Council to have good reason for not following it. In addition, the lack of a policy has contributed to Y's case drifting and there not being a cohesive plan to return her to education. Therefore, the Council's failure to have a policy was fault.

The Council's arrangements for children missing education

51. Section 19 of the Education Act 1996 states councils have a duty to make suitable educational provision for children of compulsory school age who are absent from school because of exclusion, illness or otherwise.
52. The Council's failure to maintain oversight of the Cluster and the Area Inclusion Partnership, in relation to how they dealt with children missing education, meant it effectively passed over its section 19 duties. This duty under section 19 is non-delegable therefore the Council failed to meet its section 19 duty. That was fault.

Y's education

53. When a child is not able to go to school because of ill-health and where suitable education is not being provided by the school, councils should ensure the child receives a suitable education as soon as it is clear the child will be away from school for 15 days or more.
54. Y stopped going to school in April 2018. The Council did not provide Y with alternative provision until 2 February 2019. This means Y was without any education for nine months. That was fault.
55. The Council said it only became aware of Y's lack of education in July 2018, after Mrs X contacted the attendance service. As the Cluster provides targeted children's services on behalf of the Council, once the Cluster was aware Y was not going to school, the Council should also have known. Its lack of oversight of the Cluster's work and Y's lack of educational provision was fault.
56. The Council said the Cluster was best placed to respond to Y's educational needs. However, the Cluster did not have the authority to make decisions on behalf of the Council to ensure it was meeting its section 19 responsibilities. Because of that and the Council's lack of oversight of the work of the Cluster, there was no apparent escalation route for Y out of the Cluster when its efforts failed. As a result, and because of a lack of a reintegration plan, Y's case drifted for a considerable amount of time. During this time, Y was without any education at all. That was fault.

The Council's understanding of section 19

57. The Council said it did not provide education because:
- it did not have medical evidence to say Y was unfit to attend school; therefore, it did not have a responsibility to educate her; and

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- it did not have any reason to believe Y was not receiving a suitable education whilst she was not at school because the School kept in touch with Y and sent work home.
58. Both these reasons indicate a lack of understanding of the relevant legislation.
59. Firstly, a lack of medical evidence should not stop a child from accessing education; nor does it negate the Council's duty to provide the child with a suitable education. The Council is entitled to ask for medical evidence to be provided, however, the statutory guidance states Councils should also consider "*other evidence*" to prevent a delay in arranging educational provision. The Council should have considered information from the School, Y's doctor, Mrs X and the early help plan - all were aware of Y's difficulties with anxiety. The Council did not consider Y's individual circumstances.
60. In any case, section 19 also requires councils to make suitable educational arrangements for children of compulsory school age who, because of exclusion, illness or otherwise, may not receive a suitable education unless the Council arranges it for them. Even without medical evidence, the Council had a duty to arrange suitable alternative education provision for Y under the category of 'otherwise'. Neither the Council's Area Inclusion Partnership, or the Pupil Tuition Service – both responsible for providing an education to pupils who are excluded or 'otherwise'- provided Y an alternative education either.
61. Secondly, we do not consider in itself schoolwork being sent home a suitable education. A suitable education should consider the age and aptitude of the child. It should include teaching by a teacher, whether through online, group or one-to-one provision. Without an assessment of Y's educational needs, the Council could not determine the education being provided by School A was suitable. That was fault.
62. In addition, Mrs X raised concerns with SENDIASS, the Attendance Service and through the early help meetings about Y's lack of education. The Council had multiple opportunities to identify the education in place was not meeting Y's needs. However, because the Council did not have appropriate oversight of the Cluster and Y's case, the situation went without challenge.
63. As a result, the Council failed to consider what Y's educational needs were, identify how these would be met and failed to develop a plan for Y's education, either at school or via an alternative educational placement. That was fault.
64. These faults caused Y a significant injustice as she was without a suitable education for nine months.
65. The Council's Area Inclusion Partnership also advised School A the Pupil Tuition Service could provide five hours of education to Y a week, but this was dependent on her being reintegrated into a state school. This is not what the law requires. The section 19 duty is not dependent on the young person attending a state school. That restriction was fault which caused Mrs X an injustice as she was given incorrect information about the Council's responsibility to provide an education.

Recommended action

66. Within three months of the date of our final report the Council should:
- pay Mrs X £1,300 to cover the costs of education that she has had to arrange for Y between October 2018 to January 2019.

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- pay Mrs X £1,400 to remedy the Council's failure to assess Y's needs and provide education between May 2018 and October 2018, which once offered, she engaged in. Mrs X may use this as she sees fit to meet Y's educational, social and mental health needs;
 - pay Mrs X £200 to remedy the time and trouble taken in bringing the complaint to the Council and to us.
67. In addition to this, the Council should also:
- review the way it oversees services for children and young people out of school to ensure it discharges its responsibilities for alternative provision under section 19 of the Education Act 1996;
 - provide training and guidance to Council staff, schools and services commissioned to provide alternative education to explain the Council's role and how it will work in practice following the review;
 - have a policy in place for Children Missing Education for medical needs which has full regard to current guidance and legislation; and
 - review the educational provision in place for children of compulsory school age who are on roll but have not attended school for more than 15 school days and where alternative provision is not being supplied, to ensure there is an assessment of their educational needs and how these are being met.
68. We welcome the Council's agreement to the recommendations we have made. The Council should provide us with evidence of how it has completed these recommendations.
69. 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*)

Final report

70. The Council was at fault for failing to arrange alternative education when Y was not able to attend school because of anxiety. The Council has agreed to our recommendations. Therefore, we intend to complete our investigation and issue a report.