

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

**Investigation into a complaint against  
Leeds City Council  
(reference number: 20 005 139)**

**16 June 2021**

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## 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

Miss M	The complainant
D	Her daughter

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## **Report summary**

### **Education – School admissions**

Miss M complained that the Council failed to follow the correct process when dealing with her request for her daughter (D) to start school in the reception year when she reaches compulsory school age.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

To remedy the injustice caused by the fault found, within one month of the date of this report, the Council should apologise to Miss M for failing to follow the correct decision making process and pay her £150 for the time and trouble in bringing her complaint.

We also recommend that within three months of the date of this report the Council should:

- review all pending and recent decisions in the last 12 months covering requests from parents of summer born children for delayed entry to reception;
- consider whether those decisions have properly followed the Code and Government guidance and remake decisions that have not done so;
- provide us with evidence of the review; and
- provide training to panel members and relevant council officers on summer born admissions to ensure the correct decision making process is followed when considering future applications.

The Council has accepted our recommendations.

We recommended the Council make this decision again in line with the School Admissions Code and the Government guidance and inform Miss M of the new decision. The Council has carried out this recommendation and the decision was in favour of Miss M's request.

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## The complaint

1. Miss M complained that the Council failed to follow the correct process when dealing with her request for her daughter (D) to start school in the reception year when she reaches compulsory school age.

## 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*)

### School Admissions Code

4. The School Admissions Code (the Code) requires school admission authorities to provide for the admission of all children in the September following their fourth birthday. Parents can decide not to send their child to school until they reach compulsory school age. This is the term following their fifth birthday.
5. The Code also allows parents to seek a place for their child outside their normal age group. This includes where the parents of a summer born child (born between 1 April and 31 August) choose not to send their child to school until the September following their fifth birthday. The parents can ask the admission authority to admit their child to reception rather than year one.
6. It also states that "in any circumstance where a parent requests their child is admitted out of their normal age group, the admission authority must make a decision on the basis of the circumstances of the case and in the best interests of the child concerned".
7. This includes considering the parents' views, information about the child's academic, social and emotional development, and whether the child was born prematurely. Admission authorities must also consider the views of head teachers. When telling a parent of their decision, admission authorities must clearly set out the reasons for their decision.
8. Parents do not have the right to insist that their child is admitted to a particular age group.
9. The Code says admission authorities must process applications for admission outside the normal age group as part of the main admissions round unless the request is made too late for this to be possible.

### Non-statutory guidance

10. Non-statutory guidance supports councils in decision making. Admission authorities should follow the advice given in non-statutory guidance or explain their reasons for not doing so.
11. The Department for Education published non-statutory guidance, 'Advice on the admission of summer-born children – For local authorities, school admission authorities and parents', in 2014 ('the guidance'). It was produced to help

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admission authorities understand the framework within which they must operate when responding to parental requests for summer born children to be admitted out of their normal age group. It helps admission authorities fulfil the duties imposed on them by the statutory School Admissions Code. Although the Department for Education issued revised guidance in September 2020, it is the 2014 version that is relevant to this case.

12. Admission authorities, in this case the Council, should make clear in their admission arrangements the process for seeking admission outside the normal year group.
  13. The guidance states that admission authorities must take account of the child's individual needs and abilities and consider whether these can best be met in reception or year one. This should take account of the potential impact on the child of being admitted to year one without having completed the reception year. The head teacher's views are an important part of this consideration.
  14. It notes that children born prematurely may, because of being born before their due date, fall into a different age group than if they had been born at full term. Admission authorities should take account of the age group the child would have fallen into if born on time.
  15. The guidance says admission authorities can expect parents to provide information to support their request. There should be no expectation that parents will obtain professional evidence they do not already have.
  16. It goes on to say that in general, children should be educated in their normal age group and they should only be educated out of their usual age group in very limited circumstances. However, parental requests for summer born children are different from any other request for admission out of the usual age group. Parents of summer born children must be confident the decision about the year group their child should be admitted to will be made in the child's best interests.
  17. It recommends admission authorities put in place a process to consider requests for delayed entry. It recommends parents apply for a place for their child in the normal admissions round but apply for the child to be admitted out of the normal age group at the same time. Where an admission authority agrees to a parental request for delayed start into reception then the parents must make a new application as part of the normal admissions round the following year.
  18. The guidance acknowledges that it will not always be easy for admission authorities to make a decision about a child more than a year before the point at which they may be admitted, particularly as it is difficult to know what progress they may make in the intervening period. Nonetheless, parents should know the outcome of their request for admission out of the normal age group in time to make an informed decision about whether their child will start school before compulsory school age.
  19. There is no right of appeal if the Council offers a place that is not in the year group a parent would like. However, parents can complain about an admission authority's decision not to admit a child outside their normal age group. They can approach us if they are unhappy about the way their complaint is handled.
- 'Summer born admissions: guidance for practitioners' – December 2018**
20. [This document](#) sets out our approach to complaints about the admission to school of summer born children. It gives admission authorities and the public a shared

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understanding of the correct decision making process admission authorities must take.

21. Parents or guardians can decide to wait until their child reaches compulsory school age before they start school. That is their decision to make and not one the admission authority can overrule.
22. Parents should be able to make this decision knowing which school year (reception or year one) the admission authority considers it would be in the child's best interest to start, should they decide not to send their child to school until the September after their fifth birthday. This means that the admissions authority is obliged to inform them of this when they apply for their four year old child to be admitted out of their normal age group, even if they are not intending to have their child actually admitted until they reach compulsory school age.
23. The decision the admission authority must therefore make is whether, after reaching compulsory school age, it would be in that child's best interest to start in reception or year one. It must make this decision taking account of all relevant considerations, including the factors set out in the Code, and having taken into account the potential impact of admission to year one without first having completed reception.
24. Our guidance says decision letters should clearly set out how the Council made its decision, including how it considered any evidence provided by the parent. The Council can decide it is in a child's best interest to start in year one, but it would need to explain the decision with reference to any support available within the school.

### **The Council's policy**

25. The Council is the admission authority for community and voluntary controlled schools. The Council's admission policy for 2020-2021 says, "the parents of a summer born child (a child born between 1 April and 31 August) may request that the child be admitted out of their normal age group, to reception rather than year 1".
26. The Council advises parents to apply in the normal admission round for 2020 and indicate their request on the preference form. They should specify why admission out of normal year group is being requested.
27. The Council says the application will be considered by a panel of early years education experts and head teachers where the individual case will be considered. The panel will make a decision on the basis of the circumstances of the case and in the best interests of the child concerned, taking into account the views of the head teacher and any supporting evidence provided by the parent. This will ensure the opportunity to reflect on the long term impact of that decision and balance this against the child's current needs.

### **How we considered this complaint**

28. We produced this report following the examination of relevant documents and interviewing the complainant.
29. We gave the complainant and the Council a confidential draft of this report and invited comments. We took any comments received into account before the report was finalised.

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## What we found

### What happened

30. D is a summer born child. She was due to be born in September 2016, but she was born in August 2016. Under standard admission arrangements, D would start school in reception in September 2020. Miss M decided she did not want D to start school until she reached compulsory school age in September 2021.
31. Miss M submitted a request for D to start school in reception in September 2021 rather than year one. She cited D's prematurity and said she did not think D would be physically or emotionally ready to start school in year one in September 2021.
32. In March 2020, the Council rejected Miss M's application. The panel noted D was currently attending pre-school and although she did not require any additional support, the pre-school supported Miss M's application as they believed D would benefit from more time in a smaller, less rigid, setting. The panel acknowledged the negative impact of a child attending school at compulsory school age in year one if they have not attended reception prior to this time. The panel stated, "it is often the case that at the beginning of reception class there can be quite a spread of attainment across the cohort, by the end of it children are usually ready for year one. For any child who is currently achieving age related expectations, there is no reason to think this would not continue within a reception class environment". It said it considered D's needs could be fully met in her chronological year group, it would not be in D's best interests to agree to a deferment out of chronological year group and the risks of the decision were greater than the benefits.
33. The Council said the decision meant D should start reception in September 2020 and if she declined this reception place then she would need to apply for a September 2021 year one place in May/June 2021.
34. Miss M complained to the Council in June 2020 because she felt it had not followed the correct process. Miss M highlighted it was her legal right to make the decision for her daughter to start school in September 2021 and the Council should not have said in its decision letter that D should start reception in September 2020.
35. In her complaint, Miss M set out her reasons why she felt it would be in D's best interests to start reception rather than year one when she reaches compulsory school age. Miss M said the Council did not provide reasons why D was better off being in year one rather than reception in September 2021. Miss M requested the Council revisit the panel's decision.
36. The Council responded to Miss M's stage 1 complaint in July 2020. It said the panel had 'clearly considered' why it would be in D's best interests to be admitted to reception rather than year one. It highlighted Miss M refused the offer of a place in reception in September 2020 and therefore the Council is not preventing D from having a reception year. It said the Council had considered all of the factors required by the Code.
37. Miss M escalated her complaint to stage 2. She said the stage 1 response did not investigate or consider how a decision to miss the key educational year of reception would impact on D and it has not acted in her best interests. Miss M reiterated D would not be starting school until September 2021 and that this decision was her legal right. Miss M accepted it was up to the Council to decide which year group D would join in September 2021 but her concerns about the panel not following the correct process remained. Miss M highlighted again that

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the Council had a duty to give reasons why it felt D should start school in year one in September 2021 and why this was in her best interests.

38. The Council sent its stage 2 response to Miss M in September 2020. It said the panel had followed the correct procedure by reviewing the information provided with the request fully and made its decision that D's needs can be best met with her chronological peers.
39. Miss M's concerns about the Council's decision making process remained so she complained to us.

### **The Council's comments**

40. In response to a draft decision on this complaint, the Council provided the following comments:
- The Council *"did not decide whether D should join reception or year 1 in September 2021 in March 2020. The School Admission Code does not specify that this is the decision to be made"*.
  - Miss M's case was *"considered and turned down with the panel concluding that the best interests of D would be met by starting reception in the normal age group"*.
  - The Council is of the view that we have found fault using the September 2020 guidance where it states *"...this means that the authority is making a decision about whether it would be in the child's best interest to miss the reception year"*. The Council used the 2014 guidance where it says the authority is required to consider whether the child's needs can be best met in reception or year one. The Council *"decided D's needs could be met in reception, in the normal age group, and therefore refused the request to be admitted outside her normal age group"*.
  - *"Where it is clear that a child's best interests are served by deferring entry and joining reception on the term following their fifth birthday, that decision can be made well in advance. Where the decision is that the child's best interests would be served by joining reception with their normal age group the requests are refused. To go on to make an additional, and unnecessary decision, at that point about missing reception would run contrary to the Code. The Authority is not required to follow non-statutory advice if it has a good reason to do so. Noting that the Advice was updated after the decision in March 2020, the Authority did not make a decision about missing reception. The current advice is in conflict with the Code if it is taken to mean a decision to refuse deferral can only be made at the point at which a parent is applying in the normal admission round."*
  - The Council *"fails to see how the process described above is anything other than in line with the Code and at all times in the best interests of the child"*. It *"also cannot reconcile how making a decision about whether a child must enter reception or Year 1 more than 18 months in advance is either required in the Code, or in the best interests of the child"*.
  - *"The panel found [D's] best interests could be met by starting in reception in the normal age group, and that there was no overriding evidence that it is in [D's] best interests to wait another full year before doing so. This decision allows [Miss M] to make an informed choice about what they want to do next."*
  - *"The DfE Advice document is, in numerous places, at odds with the stated intent of Government to allow all summer born children the right to be admitted"*

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*outside of the normal admission round, and also with the spirit of the Code. Until legislation is updated this is likely to continue to be the case. As things currently stand, even where one admitting authority agrees to a deferred entry to reception, others may not. A parent may have their request granted, only to move, or change preferences, and find that the new admitting authority refuses their request. The only reasonable way to progress is for the Authority to comply with the Code and make decisions based on the best interests of the child, which is what took place, and is currently in the process of taking place again.”*

- *“Although [the Council does] not accept that there was fault in the decision that was made, [it] does recognise that [its] letter could be set out more clearly and should not have told the parent when their child ‘should start’ school. That is clearly a parental decision until they reach statutory school age, and even at that point it is their choice how that education be delivered if they choose to home educate. [The Council] apologises for that inference and will ensure that [its] letters are more clearly set out about the decision that is actually being made.”*

41. In response to our draft report, the Council said it did not accept our findings ‘per se’ but it did accept the recommendations we made. The Council provided the following reasons:

*“The LGSCO has found that we have not made our decision in line with the non-statutory guidance, and that we have not given reasons for why the guidance was not followed. We agree that we did not make the decision in line with one very specific aspect of the guidance, and that our reason for doing so is that it conflicts with the statutory School Admissions Code.”*

## **Conclusions**

### **What should have happened**

42. Parents of summer born children can ask for their child to start school at age five in reception. However, the admissions authority does not have to automatically agree to the request. The admissions authority must decide if, after reaching compulsory school age, it would be in the child’s best interest to start in reception or year one. The admissions authority must make this decision taking into account all relevant considerations.
43. In the Council’s stage 1 response to Miss M, it stated that the panel had ‘clearly considered’ why it would be in D’s best interests to be admitted to reception rather than year one. We disagree.
44. The Council’s record of notes from the panel demonstrate it has applied the wrong test in its decision making for D. The decision to be made was not whether D should start in reception in 2020 or 2021. Miss M stated her intention to exercise her legal right to defer her daughter starting school until she reached statutory school age. The question to be answered was whether D should start school in reception or year one in September 2021. The Council failed to recognise this. We find fault in the Council’s decision making process.
45. The Council states it has not decided the question of whether D should join reception or year one in September 2021 because the Code does not specify that this is the decision to be made and neither does the non-statutory 2014 guidance. This is incorrect. The guidance reiterates that admission authorities must make decisions based on individual needs and abilities and consider whether these can

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best be met by the child starting school in reception or year one. They should also take account of the potential impact on the child of being admitted into year one without first having completed the reception year. The Council has failed to do this.

46. We expect Councils to follow guidance or be prepared to evidence why they have chosen to depart from it. It was produced to help admission authorities understand the framework within which they must operate when responding to parental requests for summer born children to be admitted out of their normal age group. We do not accept the Council's view that the guidance conflicts with the School Admissions Code when it is designed to help admission authorities fulfil the duties imposed on them by the Code.
47. The identified faults have caused Miss M frustration with the Council and time and trouble in trying to resolve the matter. On several occasions Miss M has highlighted and explained the errors in its decision making, but the Council has not properly taken account of her concerns. The fault has also caused Miss M anxiety and uncertainty about D's future.

## **Recommendations**

48. 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*)
49. In addition to the requirements set out above, to remedy the injustice identified in this report the Council has agreed that within one month of the date of this report, it will apologise to Miss M for its failure to follow the correct decision making process and pay her £150 for the time and trouble in bringing her complaint.
50. We also recommend that within three months of the date of this report, the Council will:
  - review all pending and recent decisions in the last 12 months covering requests from parents of summer born children for delayed entry to reception;
  - consider whether those decisions have properly followed the Code and Government guidance. The Council should remake decisions that have not done so;
  - provide us with evidence of the review; and
  - provide training to panel members and relevant council officers on summer born admissions to ensure the correct decision making process is followed when considering future applications.
51. We recommended the Council make the decision again in line with the School Admissions Code and the Government guidance and inform Miss M of the new decision. The Council has carried out this recommendation and the decision was in favour of Miss M's request.

## **Decision**

We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss M. The Council should take the action identified in paragraphs 48, 49 and 50 to remedy that injustice.