

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

**Investigation into a complaint against
Sheffield City Council
(reference number: 18 004 957)**

25 September 2020

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 B	The complainant
G	The complainant's son
School X	G's school before September 2015
School Y	G's school between September 2015 and December 2015
School Z	G's school from May 2018
Provider 1	Alternative provider for G between October 2016 to March 2018
Provider 2	Alternative provider for G between October 2016 to March 2018

Report summary

Education - Special Educational Needs

Miss B complains about the Council's provision for her son G's education and Special Educational Needs (SEN) between September 2014 and September 2019.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, the Council has agreed to:

- apologise to Miss B and G for the fault we have identified;
- pay G £19,950, for his missed education provision. This is based on a total missed provision over 43 months. Given G's difficulties, the circumstances and the Council's investigation findings, we consider the following to be an appropriate remedy;
 - £450 a month of lost provision for the seven months between January and July 2016;
 - £600 a month of lost provision for the 20 months between September 2016 and April 2018; and
 - £300 a month of lost provision for the 16 months between May 2018 and September 2019.

This sum can be used for G's educational benefit to ensure he catches up, as far as possible, on provision he missed.

- pay £250 to Miss B for the time and trouble in making her complaint;
- pay £800 to Miss B for the avoidable distress caused by having to delay her education and the loss of respite;
- pay Miss B £467 for G's lost school meal entitlement from May 2017;
- immediately review all alternative provision currently being made to identify and report back to the relevant committee about issues identified and the development of a SMART action plan to address the following:
 - any EHCP that names a non-educational provider;
 - any inadequate alternative education provision; and
 - any alternative provision that is not subject to a contract or has not been commissioned in line with the Council's agreed procedures.

We also recommend that the Council:

- arranges during September for an Educational Psychologist to work with the school and the family to establish any additional and unidentified needs due to G's experience. It should then update his Education Health and Care Plan (EHCP) accordingly and ensure that G is receiving provision to address the identified needs within three months of the date of this report;

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*)

EMBARGOED UNTIL 00:01, 05/11/20

The complaint

1. The complainant, whom we shall refer to as Miss B, complains the Council did not properly provide for her son G's education and Special Educational Needs between September 2014 and September 2019, because:
Complaint 1. it did not name a school for G until July 2015;
Complaint 2. it did not properly manage G's transition from a Statement of SEN to an EHCP;
Complaint 3. it cancelled temporary provision for G in March 2018, which compromised the effectiveness of his transition into school;
Complaint 4. it did not provide proper transport arrangements for G, which restricted his access to education;
Complaint 5. the Council's communication with Miss B was poor and reactive in nature;
Complaint 6. it failed to find an appropriate school for G for over two years;
Complaint 7. it made non-educational temporary provision for over two years that did not have sufficient resources, was poorly organised and had no curriculum;
Complaint 8. it failed to ensure G received the full appropriate educational provision and SEN support he was entitled to between January 2016 and September 2019; and
Complaint 9. did not deal with her complaint properly.
2. Miss B says that G's education has been severely affected by the Council's failures because he has missed a lot of provision. Miss B says G has self-harmed and attempted suicide. Miss B has not been able to work and her education has been affected.

Legal and administrative background

The Ombudsman's role

3. 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*)
4. 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*)
5. The Council is responsible for making sure that arrangements specified in the EHCP are put in place. We can look at complaints about this, such as where support set out in the EHCP has not been provided, or where there have been delays in the process.
6. 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*)
7. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)

Alternative education

8. Section 19 of The Education Act 1996 requires councils to provide suitable education for “... *those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them*”.

Special Educational Needs

9. A child with SEN may have an EHCP. This sets out the child’s needs and what arrangements should be made to meet them. Where an EHCP is necessary, Councils must complete and issue the EHCP within 20 weeks. (**SEND Code of Guidance**)
10. Where a local authority maintains an EHCP for a child or young person it must secure the specified special educational provision for the child or young person. (**Section 42 (1 & 2) of the Children and Families Act 2014**)
11. A council must review an EHCP within 12 months of the plan being made. A council may reassess a child’s needs at any time if it thinks it is necessary. (**Children and Families Act 2014 s44**)
12. An EHCP must be reviewed and amended in sufficient time prior to a child or young person moving between key phases of education, to allow for planning and, where necessary, commissioning of support and provision at the new institution. The review and any amendments must be completed by 15 February in the calendar year of the transfer at the latest for transfers into or between schools. (**SEND Code of Guidance**)
13. Where an EHCP is reviewed, the local authority and school must cooperate to ensure a review meeting takes place. A child’s parents must be invited to attend and given two weeks’ notice of the meeting. All advice and information should be sent to attendees at least two weeks before the meeting. Within four weeks of a review meeting, the Council must decide what action it is going to take and inform those involved. If the EHCP needs to be amended the Council should start the amendment process without delay. (**SEND Code of Guidance**)
14. 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 decision with Ofsted.

How we considered this complaint

15. We produced this report after examining relevant files and documents. This included a complaint response produced by the Council’s Internal Audit department.
16. The complainant and the Council received a confidential draft report and had the opportunity to comment. We have taken any comments received into account.
17. We have exercised discretion to investigate events from 2015 onwards because although Miss B made her formal complaint in 2018, she began to express concern about provision from January 2016 shortly after she became aware of it and made her formal complaint when G’s situation was not improving. Miss B says events from 2015 contributed to G’s problems she raised in 2016.

What we found

What happened

18. Miss B's son, G, is 15 years old. He has attended School Z since 2018. G has been diagnosed as having Asperger Syndrome and Attention Deficit Hyperactivity Disorder. This means he has difficulties with participation, communication, learning and social skills. G also has additional needs, understood to fall under the category of Pathological Demand Avoidance.
19. G attended School X during Key Stages 1 and 2. He transferred to School Y in September 2015. Following problems at school, G did not attend School Y from December 2015. School Y provided support on a much reduced timetable for G until July 2016. The Council then made alternative provision for G with Provider 1 and Provider 2, which continued until March 2018. A place at School Z became available in April 2018 and G started to attend there, on a reduced timetable. G's timetable at School Z has continually increased through 2018 and 2019.
20. Miss B expressed concern about the lack of education in G's alternative provision in July 2016 and throughout 2017. Following G's transition to an EHCP, Miss B complained to the Council in March 2018. Miss B made a further complaint in July 2018 about failure to provide education provision.
21. The Council commissioned an investigation by its Internal Audit department which made a series of recommendations based on its findings. The Council accepted the findings and recommendations of this investigation in full. Miss B challenged the accuracy of the report and the Council declined to make any changes because the supplementary evidence Miss B had provided did not fundamentally change the content of the report or change the outcome of the investigation. Miss B then complained to us.
22. Where the Council's investigation made relevant findings, we have considered them. We have not reinvestigated unless we found evidence to contradict the Council's findings.

Complaint 1: Naming educational provision in G's Statement of SEN

23. School Y was named in G's Statement of SEN in July 2015, five months after the timescale set out in statutory guidance.
24. The Council's Internal Audit report considered when the Council named School Y secondary school in G's Statement. It concluded, "*that the statutory allocation timetable was not met in terms of the decision regarding a secondary school place*".

Complaint 2: The transition to EHCP

25. The Council wrote to Miss B in September 2014 saying it would complete G's transition from a statement to an EHCP in 2015 when it proposed a secondary school place for him.
26. The Council actually began the conversion of G's statement to an EHCP in July 2017. The Council issued G's final EHCP in December 2017, within the statutory timeframe. The Council accepted that Miss B did not receive a copy of the final EHCP until April 2018, over four months later. Miss B says she received the final EHCP in May 2018. Miss B did not receive a copy of the final EHCP within the statutory timeframe.
27. The Council's Internal Audit report considered the transition from G's Statement to an EHCP. It concluded that, "*As per the Local Transition Plan, G should have*

transitioned to an EHC Plan during the academic year 2014/15, when he was in year 6, prior to moving from a primary to a secondary school setting” and “the expectation had been set with the complainant, through the issue of the letter described earlier, that the SEN would be converted to an EHC Plan whilst the child was in year 6 at School X. This expectation was not achieved and there is no explanation on file or communication to the parent as to why this did not take place”.

Complaint 3: Cancellation of temporary provision

28. The Council’s Internal Audit report considered the delay to G’s transition from School X to School Y in September 2015. It concluded that, *“This delay had a knock-on effect on the transition arrangements from primary to secondary school, and may have compounded the difficulties presented by the pupil in settling into a new setting”*.
29. Evidence from multiple sources, including G’s EHCP, professionals’ reports and email correspondence shows that G required a detailed and robust transition back into formal education provision when he moved from Provider 1 to School Z. G’s EHCP stated that *“Continued support from familiar adults throughout the period of transition e.g. staff supporting him at [alternative providers]. Staff supporting G currently should work closely with those supporting him in his new setting in order to share information, skills, strategies and approaches that work for G.”* The Council accepted that *“a long and well-coordinated plan”* was required between Provider 1 and School Z for any transition to be successful.
30. The Council stopped the alternative provision for G through Provider 1 and 2 in early April 2018. G started to attend School Z in May 2018. Because of this, Provider 1 was unable to deliver the transition support the Council had agreed was necessary and was listed in his EHCP.

Complaint 4: Transport arrangements

31. The Council initially provided a minibus to take G to school along with other children. Emails from the Council show it believed Miss B turned down its transport arrangements. Miss B says G refused to use the minibus and that it was not appropriate for his needs.
32. Email evidence from Provider 1 to the Council supports Miss B’s complaint that the minibus provided by the Council was not appropriate for G’s needs, as he was only attending school for one hour a day, two days a week to start his transition. The Council later provided appropriate individual transport for G, using taxis, from May 2018.

Complaint 5: Communication with Miss B

33. The Council’s Internal Audit report considered the Council’s communication with Miss B. It concluded that, the Council *“failed to clearly communicate to the complainant regarding the actions that were being taking to resolve the situation over the period January 2016 - March 2018”*. *“Communication with the complainant over the period appeared to be mainly reactive in relation to requests for information, rather than as a proactive process to keep her informed and updated. In many instance, initial requests were not responded to promptly, even with a holding response.”* Miss B says she believes staff turnover within the Council contributed to communication difficulties as she had to continuously repeat information to different officers.
34. The Council’s Internal Audit report considered the issue of school meals provision. It concluded that, *“For a period of 2 and a half years, whilst the pupil*

was accessing alternative provision, there was no evidence to suggest that the provision of a free school meal was offered by the school, despite the pupil being eligible to receive one”.

35. Documents provided to the Council from School Y show that Miss B raised the issue of school meals provision with the Council in May 2017. The Council's failure to respond to a concern raised with it by Miss B is symptomatic of the problems highlighted in paragraph 33.

Complaints 6, 7 and 8: Alternative provision

36. Between January and July 2016, School Y made alternative provision for G outside of school. School Y agreed that G's entitlement to a full-time education was not met appropriately. Evidence from School Y provided to the Council's internal audit investigation shows it raised concerns with the Council in April and May 2016 about the suitability of the provision being made for G, as well as the school's belief it was unable to meet his needs. Emails from School Y show that the much reduced provision in early 2016 constituted little more than simply looking after G.
37. The Council engaged Providers 1 and 2 to make alternative provision for G from October 2016 to March 2018. G spent four days each week with Providers 1 and 2. Review meeting notes show G's learning was self-directed and involved working towards a level 1 National Open College Network (NOCN) qualification, some basic science, working at a pet shop and visits to car showrooms. Miss B made clear in March 2017 that she would like G to access some formal education.
38. Review meeting notes show Miss B expressed concerns about safeguarding arrangements when G was outside and at the home of staff of Provider 1. She asked for a more stable base for Provider 1 to work with G. The Council provided funding for a location and an old chip shop was selected and used from November 2017.
39. The Council's Internal Audit report considered the alternative provision made for G. It concluded that:
- *“There was an excessive delay from January 2016 to March 2018 in transferring G from [School Y] to [School Z].”*
 - *“G's entitlement to a full-time education was not met appropriately. The use of alternative provision for an extended period of time, following a part-time timetable and with a provider who was not registered as ‘educational provision’ all support this conclusion.”*
 - *“The support provided by [Provider 1] lasted over 18 months. The agreement was made between [Provider 1] and the Local Authority, and appears to have been made outside of the usual commissioning routes.”*
 - *“because the Council had funded [Provider 1] it appears that [School Y] had assumed that responsibility for overseeing the management of the arrangement rested with the Council. There are emails to show that the Council negotiated directly with [Provider 1] regarding the provision of accommodation and funding and did not involve the school.”*
 - *It “could find no evidence to confirm that the roles and responsibilities for management oversight had been clearly articulated.”*

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- *“there was no contract in place, or other formal documentation for the provision made by [Provider 1] to define the costs involved, the work to be provided, where the service would be delivered, how supervision was to take place or the reporting requirement.”*
 - *“[Provider 1] were not approved education providers, and whilst they confirmed in correspondence and the regular progress review meetings that G was working towards [National Open College Network (NOCN)] qualifications, this would not constitute educational provision.”*
 - *“no formal inspection was undertaken of the [chip shop] premises for its suitability, but this was paid for by the Local Authority. The Head of SEND confirmed that a Locality Manager had visited the property and allocated some funding to ensure the environment was appropriate. There is however no documentation to demonstrate the detail of this visit.”*
40. G suffered serious difficulties reintegrating into a formal educational environment when he began to attend School Z. His progress was reviewed periodically. Between April 2018 and July 2018, he attended for three days a week for one and a half hours each day. Between July 2018 and February 2019, he attended for three days a week for two hours each day. Between February 2019 and September 2019, he attended for three days a week for three and a half hours each day. After September 2019, G’s attendance has increased further and is approaching full-time hours. He completed his first full week’s education in March 2020.
41. There were additional issues concerning G and a member of staff at School Y. It is clear that these were also a contributory factor towards G not attending School Y and consequently requiring alternative provision. Those issues were the subject of a separate complaint by Miss B to School Y. However, we cannot conclude the Council were solely responsible for all G’s difficulties after January 2016.

Complaint 9: Complaint handling

42. Miss B made a complaint to the Council in March 2018. This was about G being out of education since 2015, that she had not received a final EHCP for G, transition planning, communication and lack of caseworker support. The Council provided email evidence to show that Miss B’s complaint in March was allocated to a Council officer to respond at stage 1.
43. Miss B made a further complaint in July 2018. This was about substantially the same issues. We have not seen any evidence which shows there was a stage 1 response or significant communication with Miss B about how the Council was dealing with her complaint until she made her second complaint in July. There was a delay of over four months before the Council started to arrange an investigation into Miss B’s complaint. The Council says it responded to both complaints at the same time, after July. Emails show the Council dealt with Miss B’s two complaints under the same reference number.
44. After making her second complaint in July, Miss B said she wanted an independent investigation to be completed. A significant delay occurred before a senior officer was identified to investigate Miss B’s second complaint. Miss B contributed to this delay between September and October 2018 because she took time to provide the Council with a list of independent investigators she wanted it to consider.

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45. The Council asked its Internal Audit department to investigate, on behalf of the Director of Commissioning, Inclusion and Learning, in March 2019 to provide a response to Miss B's complaints. The final version of the investigation report was produced in May 2019 with minor amendments. There was no requirement for the Council to commission an independent investigation. The Council's Internal Audit investigation did find a significant range of failings on behalf of the Council.
46. However, the Internal Audit report findings were concentrated around the procedures and processes of the Council. There was little consideration of the impact of the failings that were found on Miss B and G. There was no consideration of any potential remedy in respect of the fault found.
47. Miss B challenged a number of points of accuracy in the Council Internal Audit report findings. The Council did not respond to Miss B to explain why it would not make any alterations. On the balance of probabilities, from the documents we have seen, there were some factual inaccuracies in the Council's report produced by Internal Audit. We consider this to be fault by the Council. Miss B did not suffer any injustice because these were not significant enough to have affected the overall findings.
48. The Internal Audit report made a series of recommendations the Council should follow to address its findings. Including that the Council should:
- review all alternative provision currently commissioned from non-educational providers. In the first instance, checks should be made to ensure that non-educational providers are not named in any EHCPs as this is against regulations;
 - commission alternative provision in line with agreed procedures and be formalised through a contract; and
 - conduct a review to ensure that this situation is not replicated elsewhere.
49. The Council's response to our enquiries indicates that *"The local authority is currently about to start work on the strategic commissioning of alternative provision. This will be completed as part of that process"*.
50. The Council accepts the provision delivered was not appropriate or suitable, that the provider should not have been engaged to deliver education when it did not have the suitable skills and expertise to do so. It also accepts once this was identified by senior managers, swifter action should have been taken to end the provision regardless of the views of the family, provider and those involved at the time.
- The Council says it has already taken action to address concerns identified internally and raised in the complaint about the use of non-educational providers. It: has not commissioned any new cases with providers such as the one identified in the complaint since 2017;
 - has taken a person-centred approach to moving learners away from such providers;
 - will review any outstanding cases... and commissioning arrangements... to ensure that education is appropriate to meet needs;
 - is conducting a thematic review into the city's Alternative Provision for children away from school, exploring contractual and quality themes. Providers will be required to tender for contracts based on compliance with the Education Inspection Framework defining their educational intent, implementation plan

and expected impact. Each provider will be required to produce a reflective Self Assessment Review and a challenging Quality Improvement Plan annually that will drive the quality of education and educational outcomes for students;

- will ensure that whenever alternative provision is named within an EHCP the provider will be required to be part of this inspection framework to ensure effective quality assurance and continued oversight of education provision. The local authority will not agree to name provision in a plan unless this is the case or unless directed to do so via a tribunal.

Conclusions

51. There was fault by the Council because:

- it did not name School Y in G's Statement of SEN in 2015 within the timescale set out in statutory guidance;
- it did not transition G from his Statement of SEN to an EHCP when it said it would;
- Miss B experienced a four month delay before receiving G's final EHCP;
- there was an excessive delay between January 2016 and April 2018 in finding a school placement for G;
- it did not maintain G's alternative provision through Provider 1 during the transition to School Z, as specified in his EHCP;
- it did not provide appropriate transport for G for several weeks when he began to attend School Z;
- it did not communicate effectively with Miss B;
- it took no action to address the concern expressed by Miss B about G's entitlement to school meals;
- it did not meet G's entitlement to a full-time education and by extension, did not make appropriate SEN provision;
- there was a delay of over four months before the Council started to arrange an investigation into Miss B's complaint;
- its investigation into her complaint did not consider the impact of its findings on Miss B or G; and
- it is not certain that the action the Council says it has taken has fully resolved the significant issues of systemic concern highlighted by its investigation into Miss B's complaint since they were identified in May 2019.

52. We do not consider that it was fault for the Council to respond by asking its Internal Audit department to investigate.

53. The fault we have identified has led to the following injustice.

- The delay in naming School Y affected G's transition into School Y and contributed towards alternative provision being necessary from January 2016.
- G did not receive his entitlement to a full-time education between January 2016 and April 2018.
- The lack of support through Provider 1 impacted on the effectiveness of G's transition arrangements to School Z.

- The failure to provide transport increased the disruption to G's transition arrangements.
- The problems G has faced since 2016 including the lack of suitable provision from January 2016 and the transition to School Z have exacerbated the difficulties in accessing his placement at School Z between April 2018 and September 2019. Because of this G has only been able to access a much reduced timetable during that period. G only received part of his entitlement to a full-time education between May 2018 and September 2019.
- G has missed out on a lengthy period of secondary education. This is likely to have a severe impact on his educational achievement at secondary level and beyond.
- Miss B's concerns have not been adequately responded to or addressed between January 2016 and July 2018.
- G did not receive his entitlement to free school meals between January 2016 and May 2018.
- Miss B had to spend money from direct payments intended for respite care to ensure there was appropriate supervision for G if he had to return home.
- Miss B's education has been delayed, she has missed out on placements and she has graduated two years later than she would otherwise have done. This has also delayed her being able to gain employment and she has incurred additional financial costs.
- Miss B's complaints did not receive an adequate response. The Council should have dealt with and responded to Miss B's initial complaint earlier.
- The Council cannot be sure that similar problems do not exist which affect other children and young people receiving alternative education. Other children and young people with SEN may still have non-educational providers named in their EHCP and not be receiving appropriate alternative educational provision. The Council may be providing alternative educational provision that has been commissioned outside proper procedures, or without proper management/oversight, or without a contract.

Recommendations

54. To remedy the injustice caused, the Council has agreed to:

- apologise individually to Miss B and G for the fault we have identified. The apology to G should be written in a style he will be able to easily understand;
- pay G a total of £19,950, for his missed education provision. This is based on a total missed provision over 43 months. Given G's difficulties, the circumstances and the Council's investigation findings, we consider the following to be an appropriate remedy.
 - £450 a month of lost provision for the seven months between January and July 2016. This is because G received much reduced provision, which was significantly below that he would have received in school because he was only looked after for the sessions in place. The Council were made aware that G was not receiving an appropriate education. It also takes account of G's difficulties engaging with educational activities and that contributory factors involving School Y had some impact;

- £600 a month of lost provision for the 20 months between September 2016 and April 2018. This is because the provision made by the Council during this time did not constitute educational provision and G was re-engaging with academic work. G's statement said he could follow the national curriculum and Miss B asked for G to receive educational provision; and
- £300 a month of lost provision for the 16 months between May 2018 and September 2019. This is because fault by the Council has impacted on G's ability to access his education. Through an educational provider, G has proven that his attendance has continually improved and he has been able to access the curriculum. This sum is an average and reflects the fact that his injustice was more severe at the beginning of this period and less so towards the end.

This sum can be used for G's educational benefit to ensure he catches up, as far as possible, on provision he missed out on;

- pay £250 to Miss B for the time and trouble in making her complaint;
- pay £800 to Miss B for the avoidable distress caused by having to delay her education and the loss of respite;
- pay Miss B £467 for G's lost school meal entitlement from May 2017;
- immediately review all alternative provision currently being made to identify and report back to the relevant committee about issues identified and the development of a SMART action plan to address the following:
 - any EHCP that names a non-educational provider;
 - any inadequate alternative education provision; and
- any alternative provision that is not subject to a contract or has not been commissioned in line with the Council's agreed procedures.

55. We also recommend that the Council:

- arranges during September for an Educational Psychologist to work with the school and the family to establish any additional and unidentified needs due to G's experience. It should then update his EHCP accordingly and ensure that G is receiving provision to address the identified needs within three months of the date of this report.

56. 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*)

Decision

57. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss B and G. The Council has agreed to take the action identified in paragraph 54 to remedy that injustice and we also recommend it takes the action in paragraph 55.