

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

**Investigation into a complaint against  
East Sussex County Council  
(reference number: 16 013 883)**

**10 May 2018**

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## The Ombudsman's role

For 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
D	The complainant's daughter

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## Report summary

### Education Council: Attendance

Mrs X complained the Council-run service her daughter was referred to for non-attendance at school, was unhelpful and caused her distress. She said allegations that her daughter was bullied were ignored.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

The Council has already agreed to consider improving its record-keeping of meetings where there is no-one present to represent the child or parent.

The Council should also apologise in writing to Mrs X and her daughter for the distress caused by the insensitive way it handled the non-attendance referral when it was made aware of bullying allegations.

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*)

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## The complaint

1. The complainant, whom we shall call Mrs X, complains the Council handled issues around her daughter's (D's) school attendance, in an inappropriate and unhelpful manner, causing her distress.

## The Ombudsman's role and powers

2. We investigate complaints of injustice caused by maladministration and service failure. We have used the word fault to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
4. 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 I considered this complaint

5. During our investigation, we have spoken with the complainant, considered the Council's response to our enquiries and considered relevant law and guidance. We have also considered evidence from the head teacher of D's school.

## What I found

### Relevant legislation, statutory guidance and Council policy

6. Councils have a duty to promote good attendance and reduce absence, including persistent absence. They must ensure every pupil has access to full-time education and act early to address patterns of absence.
7. Parents have a legal duty to ensure their children of compulsory school age are registered at school and attend school regularly.
8. The information the Council provides about the Council's Education Support Behaviour and Attendance Service (ESBAS) is on its website. It is a service which:
  - helps identify what might be causing poor attendance;
  - sets realistic targets to improve and maintain good attendance;
  - identifies rewards and incentives to promote attendance;
  - communicates frequently with parents about positive achievements and improvements.
9. The service is also responsible for taking legal action where appropriate to ensure parents fulfil their legal responsibility to ensure regular and punctual attendance of their child.
10. The service says before it starts work with a child, realistic and achievable targets are discussed and then set, in agreement with the child, parent and school, wherever possible.

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11. Schools refer pupils with poor attendance to the service.
  12. The Council has a policy for referral when children have attendance issues. The referral form does not ask schools to identify what service they wish to receive but instead it aims to outline the issues so that an individual child can be given the type of support it needs. One of the questions on the referral form is whether there have been any concerns about bullying.
  13. A review is undertaken after four weeks. If the target is met or attendance is above 95 percent the school will continue to monitor. Then, if attendance declines again and further unauthorised absences are recorded over a four-week period, the referral form should be completed, enclosing evidence of the registration certificate and letter/meetings with parents or attendance setting agreements. This is the form the school filled out for D.

### **Background**

14. In July 2016, D was eight years old and attending a school, which we shall call School P.
15. For the period between 2 September 2015 and 14 June 2016, D had an attendance rate of 88.65 percent, with 37 authorised absences, (18 and a half days).
16. Mrs X says that in February 2016, her daughter was the victim of an attack by another student. She said this resulted in her taking three days off. Her non-attendance was brought to the attention of the school. Mrs X says her daughter was bullied at school and it was a problem she had discussed at length with the school, even offering to do voluntary work during lunch time in the library, so her daughter would have a place of refuge if needed.
17. On 20 April 2016, Mrs X had a conversation with a school officer about D's attendance. Mrs X says she informed the school about the bullying her daughter was experiencing and was surprised to then receive a letter on 21 April 2016, which noted that her daughter had been referred to ESBAS for poor attendance.
18. The letter set an attendance target for D of 100 percent between the 21 April and 9 May 2016. Confusingly, the letter stated that to avoid a referral to ESBAS, Mrs X should produce medical evidence to explain any future absences. However, at the bottom of the letter, it was noted that D had already "been referred" to ESBAS.
19. On 12 May 2016, Mrs X received a letter congratulating D on her 100 percent attendance for that month. She was warned this level of attendance needed to be maintained.
20. The records show that between 16 May and 27 June 2016, D missed both morning and afternoon school sessions on four occasions. This is noted as eight unauthorised attendances.
21. The Council say the referral to ESBAS was made on 1 July 2016 and at that point, D's absence was 88.65 percent, which fell below the Government threshold for what is classified as being a persistently absent pupil.
22. We have seen the referral form sent by the school. Under the section entitled, "Do you have any specific concerns around bullying?", "No" has been selected.
23. On 13 July 2016, Mrs X received another letter from ESBAS, asking her to attend a meeting on 22 July 2016 as D's attendance was still a cause for concern. She was warned that failure to attend the meeting without a valid reason would result

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in a warning letter being issued and would be used against her if the Council wished to take legal action. The Council also added that it would strive to empower parents to support their child's attendance before considering such legal action.

24. At some point after receiving the letter and before the meeting, evidence confirms that Mrs X visited the school and spoke with the school head teacher.
25. The head teacher says he remembers Mrs X telling him about her "plausible concerns". He said he would speak with the educational welfare officer for attendance. He also says that he told Mrs X he would count his meeting with her as the attendance meeting that she had been called to. He said he would look into the bullying issues she mentioned and he hoped that this would address the attendance issues.
26. The head teacher says that he cannot be "100 percent" sure as he has no written record, but he recalls passing on this information to the other attendees at the meeting scheduled for 22 July 2016. His conversation with Mrs X is alluded to in the support plan, put together at the planned meeting, where it is noted that, "Parents didn't attend but had a conversation with Head teacher prior to meeting".
27. The Council has said it was not made aware of the bullying issues. The support plan put together that day said D had to have 100 percent attendance from then on. A copy was sent to Mrs X the next day. Mrs X says she was upset and surprised to receive a report, stressing her daughter had to achieve 100 percent attendance, given the difficulties she was having at the school. She felt her concerns had not been acknowledged.
28. The Council points out that:
  - Mrs X could have contacted ESBAS's offices after the meeting to discuss the plan. The offices were open throughout the summer holidays and she could have arranged another meeting; and
  - the support plan sets this out.
29. In complaint correspondence, the Council has said that the initial attendance meeting did not result in a strategy being set in stone. It said it was part of an ongoing process, which Mrs X could have engaged in, if she had wished.
30. Mrs X says she did try to contact ESBAS on numerous occasions but there is only evidence of one call in the relevant period, made on 26 July 2016.
31. On 1 September 2016, Mrs X wrote to the Council. She explained in detail why her daughter had not attended on many occasions, citing the bullying her daughter had allegedly been a victim of as the main cause of her non-attendance. She asked that the case be closed and that the Council should apologise.
32. On 16 September 2016, a senior officer, Officer Y, from ESBAS replied. The officer stressed that at the point of referral to ESBAS, D's attendance was below 90 percent and a decision had been made not to authorise any future absence without medical evidence. Officer Y said he had spoken to the head teacher, who had said he had not told Mrs X that he agreed to withdraw the referral to ESBAS when they had their conversation earlier in the year. Officer Y added that the school did not want to withdraw the referral to ESBAS. He said that the school made the decision not to authorise any further absence for D and the Council supports schools when they make this decision.

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33. The letter stressed that if Mrs X had any complaints about the way the school dealt with the alleged bullying incidents, Mrs X should take that up with the school. But, for the purposes of the ESBAS exercise, the case would remain open.
  34. Mrs X was referred to us if she was not happy with the response.
  35. On 23 September 2016, D's attendance was reviewed. It was 100 percent. She was informed that she would be reviewed again on 13 October 2016.
  36. On 11 October 2016, two days before the expected review, the Council wrote to Mrs X saying that as she had achieved 100 percent again, her case would now be closed to ESBAS.
  37. D moved schools at the beginning of the next term. Mrs X says she has had no further attendance issues.

## Analysis

38. The information on the ESBAS website about the type of service it provides says it helps identify what might be causing poor attendance. It suggests it provides support by frequently communicating with parents about positive achievements and improvements. Wherever possible it reaches agreements with the school, parent and child that are realistic.
39. In this case, a box was ticked on a referral form saying that bullying was not an issue. In early correspondence about this complaint, the Council said that bullying concerns were not raised by Mrs X "at any stage". However, it is incorrect to say that bullying was never raised as an issue. In more recent correspondence, the Council has accepted that bullying was raised as an issue in September 2016.
40. There is evidence from the head teacher of D's school that the Council was put on notice about the allegations of bullying at the meeting of 22 July 2016. The head teacher remembers Mrs X raising "plausible concerns" with him. Given the nature of the allegations we do not consider it likely that he would have forgotten the general gist of the conversation with Mrs X, that he is on record as having.
41. However, we cannot be certain the head teacher relayed these concerns at the attendance meeting. The officers made no note of any allegations of bullying. While we consider it surprising for the head teacher not to have relayed Mrs X's concerns, it would be equally surprising for the officers at the meeting not to have made a note of these, if told. The records indicate that the head teacher wanted the meeting to go ahead which raises further questions about whether he informed the meeting of the allegations or not. Given the conflicting evidence, the lack of records and because we were not present at that meeting we are not able to conclude what was or was not said. Consequently, we are not making a finding of fault in relation to what happened at that meeting. In addition, we have no jurisdiction to find fault with the actions of the head teacher. We are not able to consider matters that relate to the internal management of schools.
42. The Council says its priority was to ensure the formal support process was commenced. This is understandable. It must address poor attendance robustly. The Council points out that the plan was effective. D's attendance did go up to 100 percent. This is correct. However, D started at a new school not long after ESBAS closed its case so it is difficult to know how long her attendance, at a school where her mother alleges she was bullied, would have continued to be at 100 percent. Further we are not concerned with the ends achieved, but with

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whether the Council took into account all relevant considerations when achieving them.

43. The Council points out that, “while bullying may explain non-attendance, it does not provide permission for non-attendance”. This is correct. But the Council has also said that new evidence of the causes of non-attendance is considered as part of the process. Properly considered, the allegations of bullying, may not have had an impact on the Council’s decision. It is not my role to criticise the decisions the Council makes to encourage attendance. But we consider that the lack of evidence that it considered Mrs X’s allegations about bullying, as part of its process, is fault.
44. Even if the Council does not accept the head teacher informed the Council of the bullying allegations at the attendance meeting in July 2016, it has accepted it was informed of Mrs X’s concerns around bullying in September 2016, when she wrote to the Council.
45. The letter sent to Mrs X in response to the emotive explanation she had provided about her daughter’s non-attendance, referred her back to the school reminding her that if she did not provide medical evidence to support future non-attendance she could face legal action. The letter also says that having looked at Mrs X’s daughter’s attendance for the past year, it could not consider closing the case.
46. The Council says its letter shows due consideration was given to the allegations made by Mrs X because it references Officer Y’s conversation with the head teacher, saying he had not agreed with Mrs X to withdraw the referral to ESBAS. But this statement says nothing about any consideration the Council gave to Mrs X’s allegations. It might be that within this conversation with the head teacher, the Council considered the allegations and considered the 100 percent attendance rule should still apply. But if so, none of this was recorded or explained in the Council’s response to Mrs X. Mrs X was left feeling, understandably, that serious allegations about bullying had been dismissed and were not acknowledged as relevant to the process. This is fault.
47. The Council says that it accepts Officer Y’s complaint response should have reiterated Mrs X’s, “ability to feed the information she had provided about bullying into the ESBAS process”. But Officer Y was a senior officer in ESBAS. Therefore, ESBAS was already aware of her complaint issues and should have been considering them as part of its process. It is illogical to suggest otherwise.
48. The fact the referral form asked whether bullying was an issue or not indicates the Council does consider bullying to be an important issue and within its remit to consider. But the Council left Mrs X with the impression that no-one was listening to her. She was upset that rather than consideration being given to the alleged bullying her daughter was victim to, she had been threatened with legal action for D’s non-attendance. She said she felt bullied by the system that was supposed to help and support her daughter. She was caused an injustice.

### **Council action plan**

49. The Council has responded to us. We welcome it has said it has already put into place measures to prevent future problems. It says it will:
  - amend its support plan to include ‘tick boxes’ for different possible reasons for non-attendance so that bullying issues are more likely to be raised;



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- make it clear on any support plan that has to be written in the last week of term that the intervention time period begins at the start of the next term. A letter will also be sent to parents who did not attend to make the position clear;
  - address the quality of information recorded on referral forms from schools so that all relevant information is included.
50. Non-attendance is a difficult issue to handle. The Council has been criticised for a high level of absence and it says its strategies to deal with this have been regarded as appropriate and well targeted by Ofsted. It is dealing with a challenging problem. Sometimes parents do not want to engage and the Council must take action when it has concerns. However, Mrs X did engage and this was not properly acknowledged. In these circumstances, this is fault and it caused her an injustice.

### **Recommended action**

51. The Council has already agreed to consider improving its record-keeping of meetings where there is no-one present to represent the child or parent.
52. However, the Council has, so far, refused to apologise for the distress caused. It is for this reason we are issuing a public report. We maintain our findings and are satisfied the recommendation to remedy the injustice caused is measured and proportionate.
53. The Council should apologise in writing to Mrs X and her daughter for the distress caused by the insensitive way it handled the non-attendance referral when it was made aware of bullying allegations.
54. 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*)