

## APPENDIX A

**Ombudsman Letter to Complainant  
15 April 2009****Private and Confidential**

Our ref:

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Dear Complainant

**Complaint against London Borough of Harrow**

The Council has sent me the enclosed response to my enquiries into your complaint.

If there is anything in that response with which you disagree or upon which you wish to comment please let me have those comments in the next two weeks or let me know if you need more time. Your comments can be made by telephone, email or letter whichever you feel is more appropriate and convenient for you.

I have taken a view on the complaint but not on the remedy offered by the Council that is something on which we need your comments before we can take a view.

**The Role of the Ombudsman**

The Ombudsman's powers to investigate complaints and limitations on those powers are contained in the following statutes:

- The Local Government Act 1974
- The Local Government and Public Involvement in Health Act 2007

Under those Acts we may not investigate complaints about the internal management of schools which means we cannot investigate the actions of the Governing Body, appointments of teachers or head teachers and we cannot investigate complaints about how a Council deals with complaints about those issues.

Similarly under those Acts where a matter has been before the courts for a decision we may not take a different view from that decided by the courts.

**The Investigation**

As part of my investigation into the complaints I have:

- Spoken with each complainant about their concerns
- Reviewed and considered the papers submitted with the complaint including copies of the reports for the Complaints Procedure and Review Panel and their findings
- Submitted the complaints together with enquiries to the Council
- Received and reviewed the Council's comments which are enclosed with this letter
- Considered a provisional view on the complaints which is being shared with you for your comments
- Put to you in this letter the Council's offer of a local settlement

Following receipt of your comments the complaint will be considered by the Ombudsman who will take the final view or direct what further action he feels we should take.

### **The Council's Investigation**

The Council has considered the complaints made through all three stages of its complaints procedure. Under that procedure of the 52 heads of complaint made 22 were upheld, 2 were partially upheld and 27 were not upheld.

The Review Panel which forms part of the Stage 3 of the Procedure considered the matter and of its conclusions 2 were rejected by the Council's Chief Executive.

The Review Panel was properly constituted and the report to the Panel included the background information on the adoption by the Council of guidance on amalgamation and its decision to use the procedure whereby one school closed and became part of the new or amalgamated school.

In my view the Report was properly considered by the Review Panel and I can see no maladministration that would give me grounds to challenge the Review Panel's decision.

The Council has accepted the Review Panel's view on all but two of the complaints.

### **The Complaints**

I have taken a broad view of the complaints and grouped them together to draw out the systemic concerns that arise from the complaint: it is not appropriate to go through each complaint individually here but I have considered each and the view taken by the Council and Review Panel.

I attach a schedule showing those complaints I have grouped to help explain this letter but that does not include all the complaints made some of which do not fall within my remit.

### **Maladministration and Injustice**

The procedure contained administrative flaws and so the decisions were made with maladministration but as I explained in my earlier letter there is limited injustice that I can remedy for you.

The High Court's decision means that I must accept that but for the maladministration identified in the complaint and in our investigation the outcome would have been the same i.e. the Middle School would have been merged into the new school. So my role in this investigation is to identify what injustice remains when you take away the impact of the decision to close the school on you and your family.

There would always have been anxiety, heartache and concern over the proposals to close a much loved and cherished school whose ethos and reputation had drawn you to it as the choice for your child. There would be disagreement with those who did not agree with the position taken on the closure and those disagreements may persist. So I have to recognise that while the Council's handling of the matter may not have helped, some of these issues would have arisen and possibly continued however the situation had been handled.

But, that having been said, both governors and parents were put to considerable and unnecessary trouble as a result of some of the failings.

### **Council's Policies of 2005 and 2007**

The 2005 policy was poor and led to the debate on the right way forward. It was wrong to say that the governing bodies could make the decision or give the impression the Council was bound by the findings and vote of both bodies. Where, as in this case, the two Governing Bodies voted differently on the proposals the arbitrator is the Council (and the Office of the Schools Adjudicator) and that should have been made clear.

This led not unnaturally to the view that the Council had delegated the decision to the Governing Bodies and it should be bound by the Governing Body's decision. That complaint was not upheld and I cannot uphold it either because in law the Council could not so delegate the decision, but I do find that the Council wrongly gave the impression both that it could and had delegated that decision to the Governing Body.

The later policy of 2007 while attempting to improve information was not subjected to a complete consultation which is a matter of concern because that policy was aimed at resolving problems that had arisen with its predecessor and every effort should have been made to ensure it was adopted following full consultation. That means the policy could come as a surprise to some involved in the process of amalgamation and be seen with some distrust, not a good basis for moving forward.

The policies endorse the Council's preferred procedure where the school which has a vacancy for a head teacher becomes the school that is effectively closed and merged with the other school in this case the First School. The law prohibits me from pursuing any complaint that concerns appointments of Head Teachers: that includes the concerns about obstruction of the appointment process set out in the complaint to the Council.

The Council had to resolve the problems with the original policy and it rightly in my view sought to review the amalgamation process and to set it on the right track.

Information is the key to ensuring that everyone understands the process in which they have been invited to take part. The Policy should include clear explanations of:

- The legal framework in which the proposal will be decided
- The obligations and rights of each constituent party in that framework
- The nature of any consultations and how the results will be considered
- The power of the deciding body to call in any decision
- The rights of appeal if there are any against a decision
- The criteria by which a decision will be made
- The final arbiter of the proposal

The Council's policy failed to meet the standard I would expect and that gave rise to misunderstandings, a feeling of bias and distrust.

### **Involvement of the Middle School Governing Body (MSGB)**

It seems clear from this group of complaints upheld by the Council's investigation and the Review Panel that the MSGB were not best served by the process adopted by the Council.

In the first instance the policy of 2005 wrongly suggested that the Council's power to make the decision was being in fact delegated to the Governing Bodies by suggesting that those Governing Bodies had a right of veto. That was clearly wrong but it set off a chain of events that inevitably has led to people feeling they were ill used and that their time in making representations was wasted.

The MSGB attempted to complete its feasibility study and believed it had been properly completed when it took its vote. The Council said there had been complaints about how the MSGB had taken that decision but it failed to send those complaints to MSGB and so it did not have an opportunity to defend itself against any complaints. That is poor practice and led governors on the MSGB to feel that their views were not being properly considered and to an understandable feeling of bias against them.

### **Bias against the MSGB**

Although not accepted by the Council the Review Panel upheld this complaint. What the Review Panel's finding shows is that the failings in the process taken as a whole especially those concerning failures to check authenticity of representations, statements to Cabinet that the MSGB had not followed the correct procedures etc suggest a bias against the MSGB and that inevitably leaves a sense of outrage for those members of that body who were giving their time and energy to putting across sincerely held beliefs and views. They feel they were wrongly accused of not complying with their obligations. I similarly uphold the complaint in that I believe the Council's failings nurtured that perception of bias and did little to combat it.

I recognise however that the Council was in a position of arbitrating between two governing bodies who had reached different views on the future of their schools that was never going to be an easy path to tread and its failings only made that more difficult for all concerned.

### **Scrutiny by Members**

It is the Ombudsman's view that Scrutiny by Members is a very important part of local governance. It is good practice for Members to scrutinise how a problem with the application of their policy has occurred and how best to achieve a resolution.

When this was called in to Members the Council failed to ensure that Members were aware that:

- The process was only at the first stage of the closure process
- There was statutory guidance on school closures to be considered
- The view of the Portfolio Holder that MSGB had acted inappropriately was not supportable

The failings would not change the final outcome because we have to accept that the court has ruled the decision stands on its own merits but it damages the faith of the public in the scrutiny of decision making processes within the Council and may have led to complainants having to redouble their efforts to get their concerns heard.

### **Future Governance of the New School**

The Council informs me that a new Governing Body will take over the running of the expanded school in April when elections are held and this should reflect the whole of the new school whereas the interim body remains the Governing Body for the First School and which does not unless it co-opts additional members from the former Middle School have any members of the former MSGB on it.

There is nothing to require the First School Governing Body to co-opt former members of the MSGB in that transition period but it seems to me that encouragement should be given for governing bodies in this position to do that as a way of taking the new school forward. However, I must be careful not to stray into an area outside my jurisdiction which clearly the actions of the Governing Body are and I cannot arbitrate on how the new school is or has been governed since merger.

**Provisional Conclusions - Injustice and Remedies**

It seems clear to me from my resume of the groups of complaints upheld by the Review Panel and which I uphold (including the bias to the MSGB) that injustice to you arises be that as a member of the governing body or as an interested parent engaging in the process.

You could not stop the amalgamation and the court's decision leaves me no choice but to take the view but for the maladministration the school would close and be amalgamated and you would no doubt have been involved in time and trouble in opposing the proposal.

You were put to time and effort in pursuing issues which could have been avoided. For that it has offered a sum of £100 in recognition of the work that was additional to the work you would have had to do anyway as a governor in dealing with the process had it been handled properly.

Before we take any view on that proposal your view on that offer in settlement is welcomed and will be taken into account by the Ombudsman when he decides what he thinks would be a reasonable remedy.

Please let me have your comments on what the Council has said and its offer of a remedy within the next two weeks or let me know if you need additional time in which to respond.

I look forward to hearing from you.

Yours sincerely

**P E Warren**  
**Investigator**