

# *Out of school, out of sight?*

Ensuring children out of  
school get a good education

Focus report: learning the lessons from complaints  
July 2022

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# Ombudsman's foreword



Every child has the right to a good, full-time education. But for some children who cannot fully attend a school to access their education, the reality is different.

Our investigations show that some children in this situation are struggling with little or no education, robbing them of their potential to thrive.

When a child (of the compulsory age) cannot go to school, the local authority must find out why. If there is a duty for it to act, it must make alternative arrangements to provide a suitable education.

This report shares a number of case studies where things have gone wrong with this process and aims to shed light on how to learn from them.

In it, we highlight examples such as:

- > a boy suffering with anxiety, unable attend school, being left with no education for three months. This was due to the council not retaining sufficient oversight of the organisation it had outsourced its alternative provision services to
- > a boy who received just five hours a week of online tuition in English and maths for a year. There was no evidence the council properly considered how this would meet his

needs or how a balanced curriculum might allow him to study all his GCSE subjects

- > a girl who was without a school place for nearly 14 months after moving into an area mid-term where no places were available. The case illustrates the difficulty for parents and councils in admitting a child when all the local schools are academies

The key learning point we want to highlight in this report is that the local council has the duty to arrange alternative education, not the school a child attends. Councils need some way to identify when their duty has arisen, and some will have arrangements with schools to carry out assessments or arrange alternative provision themselves. However, responsibility remains with the council, and we will hold councils to account if things go wrong. Councils can contract out their services, but not their responsibility for their statutory duties.

From the complaints that reach us about children missing education, we often find local authorities did something wrong. Last year, we upheld nearly 9 out of 10 (89%) investigations on this topic. This compares with a finding of fault in two thirds (66%) of our investigations across all topics over the same period.

We published a similar report on children missing education a decade ago. And while much has changed since, with schools being increasingly autonomous and many now academies, we wanted to reiterate that local councils remain responsible for ensuring pupils who cannot attend school receive suitable full-time education.

We also hope to help make parents and carers more aware of the council's duties to children out of school. We have seen examples where councils have directed parents and carers back to their schools even when they have approached the council for help.



***The key learning point we want to highlight in this report is that the local council has the duty to arrange alternative education, not the school a child attends.***

The reasons a child may not receive suitable education at school are often complex, as the case studies in this report show. There is often not a single reason. There may be several council departments involved, such as education welfare, special educational needs, and children's social care. It is vitally important councils coordinate these services if they are to fulfil their duties and meet the needs of children missing education.

Some children struggle to cope with full-time education because they have health problems. We are seeing increasing numbers of cases where children are unable to attend school because of anxiety. Often, these cases involve children with special educational needs which have yet to be fully understood. There may be little, or even conflicting, evidence about the child's needs. Nevertheless, councils must assess the available evidence and decide for themselves whether they have a statutory duty to make other arrangements for the child's education. They should take action without delay.

I hope this report will help councils to reflect on their services and consider what improvements may be necessary in their area, to ensure they don't lose sight of children who are out of school.

A handwritten signature in black ink, appearing to read 'M. King'.

**Michael King**  
**Local Government and**  
**Social Care Ombudsman**  
**July 2022**

# Legal background

Parents have a duty to ensure their children receive a suitable, full-time education. Most do this by sending their children to school. (*Education Act 1996, section 7*)

However, councils must “*make arrangements for the provision of suitable education at school or otherwise than at school 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.*” (*Education Act 1996, section 19(1)*)

Suitable education means efficient education suitable to a child’s age, ability and aptitude and to any special educational needs he may have. (*Education Act 1996, section 19(6)*)

The education provided by the council must be full-time unless the council determines that full-time education would not be in the child’s best interests for reasons of the child’s physical or mental health. (*Education Act 1996, section 3A and 3AA*)

Full-time education ranges from 21 hours per week at Key Stage 1 to 25 hours a week at Key Stage 4. If councils provide one-to-one tuition, the hours of face-to-face provision could be fewer as the provision is more concentrated.

Compulsory school age is from five to 16. (see *Education Act 1996, section 8 for the precise dates*)

Councils may make alternative arrangements for a child or young person who is not of compulsory school age, but they do not have a duty to do so. This report focuses on council duties to children of compulsory school age.

If a child is unable to attend school because of illness, the council must make alternative arrangements once the child has been absent for 15 days, either consecutively or cumulatively. The council must consider the individual circumstances of each child and take account of any medical evidence or advice when deciding what arrangements to make.

If a child has been permanently excluded from school, the council must arrange alternative education from the sixth school day following the exclusion, although it may start sooner.

“Otherwise” is a broad category which covers circumstances other than illness or exclusion in which it is not reasonably possible for a child to take advantage of any existing suitable schooling.

In all cases, councils must consider the individual circumstances of each particular child and be able to demonstrate how they made their decisions. They must take account of all available evidence, and record the reasons for their decisions. They may need to make decisions in cases where they do not have all the evidence they would like.



# Our role in complaints



We look at the actions of councils in making alternative arrangements for the education of children who would not otherwise receive suitable education because of illness, exclusion and other reasons (“the section 19 duty”).

We check councils consider the individual needs of each particular child; take account of all the evidence available to them; make decisions in the best interests of the child and without delay; and review their decisions to ensure any alternative education they arrange continues to meet the child’s needs.

Where councils make arrangements with others, such as schools, to carry out any of their functions, including assessments or provision of alternative education, we will hold the council to account if things go wrong.

Access to education is a fundamental right , so where a council is unable to arrange the alternative provision a child needs despite its best efforts, we may still find fault.

Where we find a council at fault, and this has caused injustice, we will recommend how it should put things right. This might include:

- > apologising
- > making a decision that it should have made before
- > reconsidering a decision that it did not make properly in the first place
- > making a symbolic payment to recognise the impact of fault where this is not possible

Most importantly, we can make recommendations for the council to improve its services. We do this when our investigations identify a practice or policy fault, and are aimed avoiding similar problems reoccurring, therefore benefiting everyone in the area.

Our ‘service improvement’ recommendations often comprise things like reviewing procedures, updating public information, and training staff. These are mapped out for every council on the [Your Council’s Performance](#) page of our website.

Normally we require parents to use a council’s complaints procedure before we investigate, but we may waive this requirement if a child is out of school.

We may not be able to investigate a complaint, or part of a complaint, if the reason a child is not receiving suitable education is closely linked to an appeal to the SEND Tribunal about special educational provision for the child.

We have published Focus Reports about issues facing children with Special Educational Needs and/ or disability (SEND).

## Complaints to the Ombudsman

Last year (April 2021 – March 2022) we carried out 38 detailed investigations regarding alternative education for children out of school. We upheld 34 of these investigations (89%), meaning we found fault in how the council had acted.

# Common issues and learning points

## Taking responsibility for ensuring pupils receive suitable full-time education

Schools are increasingly autonomous and many, such as academies, are now independent of local councils. Nevertheless, councils remain responsible for ensuring pupils who cannot attend school receive suitable full-time education, regardless of the type of the school they attend.

Councils must work with schools and parents to identify children who need alternative education and make suitable arrangements. Sometimes, councils arrange for schools or other bodies to carry out their functions on their behalf. However, the council remains responsible. It is important,

therefore, that councils retain oversight and control to ensure they fulfil their duties.

We want to help make more parents aware of the important role councils have in making arrangements for pupils who cannot attend school. It is natural for parents to deal directly with the school if their child's attendance becomes an issue, and they may not know about the council's responsibilities. To make matters worse, we sometimes see examples of councils directing parents back to their children's school even when they approach the council for help.



### Billy's story

Case reference: [19 008 091](#)

Billy was a pupil at an academy in an area where most the secondary schools are academies. Councils have no control over academies.

Billy experiences anxiety, and when his mental health deteriorated, his school attendance declined. The school proposed an alternative timetable and measures to support Billy's return to school, but it was not successful.

Billy's father asked the council for help. He was concerned Billy was not receiving any education. The council's education welfare officer attended meetings at the school.

Three months later, with Billy still out of school, the council told the academy to make a referral to the Community and Hospital Education Service (CHES) for an assessment.

CHES is an academy that provides alternative education on behalf of the council. The council has 'outsourced' its duties to CHES, but it must retain sufficient oversight to ensure they are met.

Our investigation found the council had not assessed Billy's needs when he first stopped attending school, or considered whether it had a

duty to arrange alternative education for him. The council relied on Billy's school to make a referral and CHES to carry out the assessment. As Billy was unable to attend school, the council should have made alternative arrangements and could have arranged tuition for him, but he received no education at all for three months.

### How we put things right

The council agreed to make a payment to Billy's father for the education he had missed, and to review its policies and procedures to make sure it retained sufficient oversight and control of the outsourced arrangements, allowing it to take action when things go wrong. The council has made a significant investment in the management and oversight of the service, which we welcome.

### Learning point

The council must decide whether alternative education is necessary, not the school or parents. Councils can ask schools to make referrals or carry out assessments, but the council remains responsible.

# Common issues and learning points

## Making decisions based on the evidence available

Sometimes we find councils have not made alternative arrangements for a child's education because the parent has not produced evidence to explain why the child cannot attend school. In some cases, children have been out of school for many months without alternative education. The council may even have threatened the parents with prosecution.

Councils must make decisions based on all available evidence. If a child is not attending school and the council decides not to prosecute the parents, the council is likely required to make alternative arrangements for the child's education. The longer a child is out of education, the more likely it is the council should take action that is in the best interests of the child.



### Fareen's story

Case reference: [19 000 476](#)

Fareen has autism. Like many girls with autism, her condition was diagnosed relatively late when she was soon to transfer to junior school. She was good at masking her difficulties at school, and it was not until she got home that she would have 'meltdowns'. Problems came to a head when Fareen refused to go to school.

The council initially threatened Fareen's parents with prosecution. Councils can prosecute parents for failing to ensure their children receive suitable education. However, the school decided not to go ahead with the prosecution.

Our investigation found the council relied on Fareen's schools to make referrals for alternative education. Even when her parents asked the council directly for help, it told them to ask the school instead of providing the support it should have done. We found the council failed to assess Fareen's needs and consider whether she needed help.

The council was aware of problems because it was responsible for Fareen's special educational provision and knew she was not attending school. At the annual review of Fareen's Education, Health and Care (EHC) Plan (the document setting out her needs and the arrangements needed to meet them), Fareen's school told the council it could not meet her needs. There was no coordination between different services at the council. The council should have taken action quickly, but it did not.

Another problem was the lack of medical evidence to explain why Fareen could not attend school. The council decided not to provide alternative education because there was no evidence to justify Fareen's absence from school. This was wrong. While councils must take account of any available medical evidence, they must make their own decision about alternative education, even when there is no medical evidence.

The council's faults meant Fareen missed a considerable amount of school and her education was disrupted for more than two years. The way it handled Fareen's case caused her parents significant anxiety and distress. They were particularly upset by the threat of prosecution when they asked for help. They were left largely to themselves to sort out problems the council should have taken in hand.

### How we put things right

The council agreed to apologise to the family and make a symbolic payment for the disruption to Fareen's education and the distress caused. It also agreed to review its policies and procedures to ensure it was properly supporting children unable to attend school.

### Learning point

Councils must make their own decisions about a child's need for alternative education, even if there is no evidence or conflicting evidence from other professionals.



# Common issues and learning points



## Luke's story

Case reference: [19 004 305](#)

Luke has autism and severe learning disabilities. He had an Education, Health and Care (EHC) Plan maintained by the council and was a pupil at a special school. His mother withdrew him from school because she said he was being bullied. She complained to the Governors and then to Ofsted. Both concluded the school had managed the incidents properly.

Luke's mother decided to try home schooling. Two months later, she asked the council to arrange home education. The council said it needed medical evidence before it could arrange home education. Luke's mother did not provide the evidence the council needed.

The council arranged a meeting with the school and made plans for Luke's return. It said it would prosecute Luke's mother if he did not return to school. Luke's mother asked for a different school, or permission to educate Luke herself at home.

Fifteen months after Luke's mother withdrew him from school, she complained to the council he was still out of education. The council said it had tried to help her find a school she was happy with, but it was satisfied he could return to his original school place. It was another six months before Luke returned to education.

Our investigation found there was no fault by the council in the early stages of Luke's absence from school. There was a school place available for him, which was reasonable for him to access. His mother's decision to withdraw him from school did not make the council responsible for his education.

However, the longer he remained out of school, and the more the council became involved, the more we found problems with the council's actions. The council decided not to prosecute Luke's mother, but there was no rationale for the council's decision or alternative plan of action recorded in the council's files. Eventually, the council appears to have decided Luke could not return to his school, but it did not arrange any alternative education until he started college.

Luke was out of education for two terms once the council decided he could not return to his school. The council should have considered alternative education provision for him during this time.

### How we put things right

The council agreed to apologise and make a symbolic payment to recognise the education Luke missed after it decided he could not return to his school and until he started college. It also agreed to review its policies and procedures, and draw up an action plan to ensure swift action is taken on similar cases in future.

### Learning point

Just because a child is out of school, the council does not necessarily have to arrange alternative education. The council must evaluate the alternatives and consider the child's needs. It should keep its decisions under review.

# Common issues and learning points

## Providing suitable full-time education

Where councils make alternative arrangements for a child's education, we sometimes see them offering what looks like a 'standard package' of alternative educational provision. This can be as little as five hours of tuition a week.

The law says the education provided by the council must be full-time unless the council determines that full-time education would not be in the child's best interests for reasons of the child's physical or mental health.

Full-time education ranges from 21 hours per week at Key Stage 1 to 25 hours a week at Key Stage 4. If councils provide one-to-one tuition, the number of face-to-face hours could be fewer because the provision is more concentrated. But children are still entitled to a full-time education.

Education provision must be based on an assessment of the individual child's needs. The council should be able to demonstrate how it considered the child's needs and decided what provision to make.



### Jadon's story

Case reference: [20 000 747](#)

Jadon has an Education, Health and Care (EHC) Plan maintained by the council. He attends a mainstream secondary school. He has autism and severe anxiety.

Jadon had stopped attending school. At the time, his parents were appealing his special educational provision to the SEND Tribunal. Following the hearing some months later, the council agreed to arrange suitable alternative provision as part of efforts to help him integrate back into school.

Jadon was due to start his GCSE courses. The council arranged five hours a week of online 1:1 tuition in Maths and English. It said it could not offer tuition in the other subjects he had chosen for his GCSEs. Jadon's school also sent work home. This arrangement continued for a whole school year.

Our investigation found the council had no evidence to show it had properly considered providing Jadon with a broad and balanced curriculum allowing him to study all his GCSE subjects, or that its offer of five hours of tuition a week would meet his needs.

The council should have considered how to provide a broad and balanced curriculum, and as much tuition as Jadon needed.

### How we put things right

The council agreed to apologise and pay more than £3,000 towards Jadon's educational benefit, which was to recognise his missed education when he should have been studying the full range of GCSE subjects. The council also agreed to show us how it had reviewed its procedures for providing GCSE learning for children unable to attend school or engage with tutors.

### Learning point

Councils must provide a broad and balanced curriculum, and the education must be of a standard a child would receive in school. The education must be full-time education unless the council decides it is not in a child's interests.

# Common issues and learning points

## Reviewing plans and amending the approach

Councils may provide help even when they do not have a duty to arrange alternative education. Education Welfare Officers and specialist teachers may provide support and advice to a child's school, for example.

Where their involvement does not rapidly secure a child's return to full-time education, the council may need to consider making alternative arrangements.



### Janine's story

Case reference: [19 005 803](#)

Janine's family moved to a new area and needed to find school places for her and her two siblings. This proved difficult, as all the schools were academies and many were selective grammar schools.

It took eight weeks for the family to find school places for the three children. We found the council provided the family with appropriate advice and support. The delay in securing school places was due to the family's choice of schools, not fault by the council. We did not find the council should have arranged alternative education.

Once enrolled, Janine missed a considerable amount of school. Her attendance was poor. She was later assessed as having special educational needs.

Our investigation carefully examined the council's extensive involvement. The council provided significant input through its Early Help service, but it did not arrange alternative education when Janine did not attend school. We did not criticise the council for the lack of alternative education and recognised it was pursuing a strategy to secure her return to a suitable school.

However, we were concerned the council allowed the case to drift when its Early Help strategy was not successful. We found fault with the council's failure to change tack.

Janine ended up without education for almost two years at a critical time in her education in Years 10 and 11. Every day she did not attend school, it reinforced a pattern for her, making it more difficult to return as she fell increasingly behind with her academic work in relation to her peers.

### How we put things right

Following our investigation, the council agreed to make a symbolic payment to help Janine catch up with the education she missed. It also agreed to make a number of procedural improvements to ensure other cases were not allowed to drift if Early Help interventions were unsuccessful.

### Learning point

Councils may decide alternative education is not appropriate and provide other forms of support. They should keep plans under review and not allow cases to drift if plans are not successful.



# Common issues and learning points

## Restricting alternative provision: the meaning of ‘otherwise’

The duty to make alternative arrangements applies to those who cannot access education “by reason of **illness, exclusion from school or otherwise**”.

“Otherwise” is a broad category and includes the scenario where a child is unable to take advantage of any available suitable schooling, or does not have a school place.

Councils often have no direct involvement in school admission decisions. However, they have a vital role coordinating Fair Access Protocols. These aim to ensure children without school places are quickly enrolled. When children are without places, the council may need to arrange alternative education.



### Grace’s story

Case reference: [19 017 034](#)

Grace’s family moved house in January when she was in Year 10. Her mother applied for school places before they moved, and also completed the council’s mid-term transfer form. None of the schools, which were all academies, offered Grace a place. The council did not offer any help.

Grace’s mother continued to apply for school places and asked the council for help. Later she contacted the council’s Children Missing Education team for advice. The council agreed to prioritise Grace’s case. Again, Grace’s mother heard nothing. She tried to enrol Grace at college, but she was not old enough for college.

The next month the council referred the case to its Fair Access Panel. Some months later the Panel secured a place for Grace but shortly before she was due to start, the school withdrew the offer. Almost 13 months after Grace’s mother first asked for help, the council arranged alternative education for Grace until a suitable school place could be found. Grace was admitted to a school some three months later.

Our investigation found the council at fault for a lack of coordination between its services. It led to Grace being without a school place for five terms, and without education for almost four terms. This happened at a critical stage of her education when she should have been preparing for GCSEs.

Grace’s story illustrates the difficulties that parents – and councils – can face when all schools are academies. Councils have no power to direct admission to an academy (although they can apply to the Secretary of State). Nevertheless, councils have a role in coordinating the admission of hard to place pupils, including those unable to find school places. Where they cannot do so quickly, councils may need to arrange suitable alternative education themselves.

### How we put things right

The council agreed to make a substantial payment of more than £7,000 to acknowledge the education Grace missed at a critical stage of her schooling. The council also agreed to review its service and share an action plan that was already underway to improve procedures, which included training for staff on the Fair Access Protocol and when to escalate cases.

### Learning point

Councils may need to arrange alternative education for a pupil who moves into the area and cannot find a school place.

# Promoting good practice



Drawing on the experience from our investigations, we have identified six recommendations for councils:

- > Consider the individual circumstances of each case and be aware that the council may need to act whatever the reason for absence (except for the minor issues schools deal with on a day-to-day basis) – and even when a child is on a school roll.
- > Consult all the professionals involved in a child's education and welfare, and take account of the evidence when making decisions.
- > Choose (based on all the evidence) whether to require attendance at school or provide the child with suitable alternative education.
- > Keep all cases of part-time education under review with a view to increasing it if a child's capacity to learn increases.
- > Work with parents and schools to draw up plans to reintegrate children to mainstream education as soon as possible, reviewing and amending plans as necessary.
- > Put the chosen action into practice without delay to ensure the child is back in education as soon as possible.
- > Where councils arrange for schools or other bodies to carry out their functions on their behalf, the council remains responsible. Therefore, retain oversight and control to ensure your duties are properly fulfilled.



# Encouraging local accountability – questions for scrutiny



Councils should be accountable to the people who use them. The Ombudsman was established by Parliament to support this. We recommend a number of key questions that councillors, who have a democratic mandate to scrutinise the way councils carry out their functions, can consider asking.

- > How many children are there in your council's area not attending school, or not attending full-time?
- > Is there easily accessible information on your council's website for parents who are worried about their child's education or attendance?
- > How does your council identify children who are not attending school, or not attending full-time?
- > Does your council have strong links at all levels between different services, such as attendance, education welfare, and special educational needs, to ensure children missing education are identified and their needs are met?
- > Does your council have strong links with schools, including academies and other schools which are independent of the council, and clear processes for referring cases for support?
- > If your council has agreements with other organisations to fulfil its statutory duties to arrange alternative education, how are these arrangements managed? How does the council ensure the quality of the service?
- > Does your council document its decisions in individual cases, including decisions not to provide alternative education?
- > How does your council tailor its offer of alternative education to meet the needs of the individual pupil?
- > What has the council learnt from complaints about its service for children missing education? How have complaints led to service improvements?



EMBARGOED TILL 00:01, 07/07/22

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