

Report

on an investigation into
complaint nos 09 010 311, 10 003 770,
10 003 787, 10 003 958, 10 004 090,
10 004 180, 10 005 068 and 10 007 257
against Kent County Council and
Tunbridge Wells Girls' Grammar School

29 June 2011

**Investigation into complaint nos 09 010 311,
10 003 770, 10 003 787, 10 003 958, 10 004 090,
10 004 180, 10 005 068 and 10 007 257
against Kent County Council and Tunbridge
Wells Girls' Grammar School**

| Table of Contents | Page |
|---|-------------|
| Report summary | 1 |
| The complaints | 3 |
| The investigation | 3 |
| Legal and administrative background | 3 |
| Admission arrangements | 4 |
| Mrs K's complaint about the tests | 5 |
| What happened in the appeals – generally | 7 |
| What happened in Mrs K's appeal | 8 |
| What happened in other appeals | 9 |
| Mr and Mrs S's appeal | 9 |
| Mr N's appeal | 9 |
| Mr and Mrs P's appeal | 9 |
| Mrs M's appeal | 9 |
| Mrs E's appeal | 10 |
| Mr B's appeal | 11 |
| Findings – the general conduct of the hearings | 11 |
| Findings – the tests and Mrs K's appeal | 12 |
| The Council | 12 |
| The Panel | 12 |
| Findings – the conduct of the other appeals | 13 |
| Mr and Mrs S | 13 |
| Mr N | 13 |
| Mr and Mrs P | 14 |
| Mrs M | 14 |
| Mrs E | 15 |
| Mr B | 15 |
| Appeals – the Governors' response | 15 |
| Appeals – the Council's response | 15 |
| What happened – communicating the Panel's decision making | 15 |
| Communicating the decision on Mrs K's appeal | 16 |

| | |
|---|-----------|
| Communicating other Panel decisions | 17 |
| Communicating Panel decisions – the Council’s response. | 17 |
| Findings – Communicating Panel decisions | 18 |
| The Council | 18 |
| Conclusions – maladministration | 18 |
| Conclusions – injustice | 20 |
| Conclusions – remedies | 20 |

Key to names used

| | |
|--------------|----------|
| Mrs K | A parent |
| Mr and Mrs S | Parents |
| Mr N | A parent |
| Mr and Mrs P | Parents |
| Mrs M | A parent |
| Mrs E | A parent |
| Mr B | A parent |

The Local Government Act 1974, section 30(3) generally requires the Ombudsman to report without naming or identifying the complainants or other individuals. This report uses the initials or job titles of the people involved in this complaint.

Report summary

Subject

The parents of six girls complain about the way that an independent Appeal Panel dealt with their appeals for places at Tunbridge Wells Girls' Grammar School (TWGGS).

One parent, Mrs K, complains about the way Kent County Council administered the tests that her daughter sat as part of the admission arrangements. One of the tests was disrupted and her daughter's score in that test was significantly lower than in others. This meant that, although she passed the tests, she did not get a place because of the distance between her home and the School. Her score in the disrupted test meant she did not qualify for one of 14 governor places, which are allocated by score'.

Finding

The investigation established that Kent County Council had:

- failed to administer the tests properly and did not have any policy and procedure to deal with the situation of Mrs K's daughter;
- provided the School's Governors with a Clerk and an Appeal Panel who prove to be incapable of fulfilling the requirements of the Code and whose conduct of the appeal hearings was riven by maladministration;
- contravened the statutory Code by sending decision letters from its Legal and Democratic Services Section with the facsimile signature of the Panel Clerk ;
- substituted standard decision letters chosen by its Legal and Democratic Services section for those agreed by the Panel.

The Ombudsman found that the County Council had acted with maladministration.

The Ombudsman also found numerous instances of maladministration by the Appeal Panel including:

- failing to manage the hearings, the decision making and timing efficiently or effectively and to take account of the needs of parents during the hearings;
- failing to adequately record its proceedings, and particularly the advice it obtained during the hearings;
- causing one parent great offence by the Chair's inappropriate and irrelevant comments about his experience of part of the Middle East;
- trying to deter one child's parents from arguing that the School had not proven that admitting more children would create prejudice;
- showing, through the Chair, an irrelevant and inappropriate interest in the private affairs of those parents and in the Chair wasting valuable time in seeking discussions with them after the hearing;

- adjourning during one parent's hearing to seek advice and not informing the parent of that advice;
- going beyond its role and remit in commenting critically during the same parent's hearing on the School's Admissions Manager going into applicants' homes;
- becoming hopelessly muddled in its decision making and failing to adequately record its reasoning;
- failing to complete its decision making and leaving it to the Council's Legal and Democratic Services Section.

Recommended remedy

The Governors of TWGGS responded swiftly to the Ombudsman's concerns and offered fresh hearings for six girls whose parents had complained. The Governors will not use the Council to provide a panel and clerk for future appeals. The Ombudsman is satisfied that this was an adequate and appropriate remedy for the injustice caused to the parents and appreciates the Governors' positive approach.

The Council apologised to Mrs K for the disruption to her daughter's tests. As the Appeal Panel decided to give her daughter a place at TWGGS, the Ombudsman considers this to be an appropriate and adequate remedy for the injustice caused to Mrs K.

The Ombudsman is concerned that the maladministration by the Council identified in this report could recur and cause significant injustice to other parents. She recommends that the Council should:

- require its officers to consult on and introduce a procedure for reviewing incidents or errors affecting selective testing together with a means to enable, in appropriate circumstances, candidates to be retested;
- require its officers to report to it on how its test invigilators will be trained and supported to deal efficiently and calmly with untoward events during testing;
- require its officers to report to it on how it can ensure that any clerking and appeals service which it provides is effective and complies with the law and statutory guidance;
- instruct its Legal and Democratic Services Section to stop sending appeal panel decision letters with the Clerks' facsimile signatures and ensure that any letter that it prepares on behalf of a panel is the one selected by the panel.

The complaints

1. The parents of six girls complain about the way an independent Admission Appeal Panel dealt with their appeals for places at Tunbridge Wells Girls' Grammar School (TWGGS) for daughters for September 2010.
2. One parent, Mrs K, complains about the way Kent County Council administered the tests that her daughter sat as part of the admission arrangements.

The investigation

3. To investigate the complaints my staff:
 - met the Head Teacher, who had acted as the Governors' presenting officer at the appeal hearings, and the School's Admissions Manager, who accompanied the presenting officer at the hearings;
 - inspected the notes made by the Clerk to the Panel about all the hearings and about the Panel's decision making on all the appeals;
 - inspected the papers considered by the Panel for all the appeals it heard, including the parents' cases in support of their appeals and the Governors' cases opposing them;
 - inspected the notes of the hearings made by the School's Admissions Manager;
 - met separately with the Clerk to the Panel and all three members;
 - met the Council's Assistant Democratic Services Manager, responsible for the arrangements for Admission Appeal Panels (made in this case on the School's behalf and at its request).
 - met the Council Manager responsible for arranging tests that form part of the admission arrangements for selective schools in Kent.

Legal and administrative background

4. Parents who do not get a place for their child at the school they prefer can appeal to an independent Admission Appeal Panel established by the admission authority.
5. TWGGS is the admission authority and it engaged the Council to recruit and clerk its Appeal Panel.
6. There are two applicable statutory codes for admissions to schools and appeals – the School Admissions Code 2010 ('Admissions Code'), and the School Admission Appeals Code 2009 ('Appeals Code')¹.
7. Admission authorities, local authorities and Appeal Panels are required² to have regard to these Codes. The Codes contain mandatory provisions, as well as

¹ Laid by the former Secretary of State for Children, Schools and Families before Parliament under section 84 of the School Standards and Framework Act 1998 (SSFA) and approved by Parliament.

guidance. In this way, parts of the Codes are binding on admission authorities, local authorities and Appeal Panels.

8. Briefly, a panel dealing with secondary school admission appeals must decide whether:
 - the admission arrangements were lawful and properly applied to the child who is appealing; if not, and the fault would have made a difference to the outcome, offer the child a place;
 - the school has demonstrated that admitting more children would prejudice the efficient education of those who already have places or its use of resources;
 - the parent's reasons for wanting their child to attend the school outweigh any prejudice that would be caused to efficient education or use of resources.
9. If there are a number of appeals for the same school a Panel can arrange to hold its hearing in two parts – a 'grouped' hearing involving all the parents to deal with whether admitting more children would cause prejudice and then separate, individual hearings for each parent's case.
10. The Panel dealing with these complaints did not hold a two-stage hearing. This meant that, in each individual case, it should have considered whether the School had demonstrated that admitting more girls would cause prejudice, taking into account what the parent said.

Admission arrangements

11. TWGGS is a Foundation Grammar School for girls. It sets its own admission criteria.
12. Kent County Council has a duty to operate a co-ordinated scheme for transferring children from primary to secondary school. Over 30 schools in its area offer places to children based on academic ability as established by tests. Parents who want their children to attend one of these schools must register with Kent County Council for their child to take the tests. The Council organises the tests in maths, verbal reasoning, and non-verbal reasoning. The maximum score in each test is 140, so the total maximum score is 420. In 2010 to be considered for a place at a selective school a child had to achieve at least 117 in each test and a total score of at least 360. Passing the tests does not mean that a child will get a place at any of the schools.
13. The Council arranges for the tests to be marked and, firstly, informs primary schools of the results. A primary school can ask for a panel of head teachers to review a child who does not achieve the pass mark but was expected to do well. Based on other evidence of ability, the panel of head teachers can decide that a child who did not pass the test is suitable for grammar school education.

14. The County Council notifies parents of their child's test score about two weeks before the deadline for parents to submit a School Common Admission Form (SCAF) with their preference for three schools.
15. The Council sorts the SCAFs and notifies the relevant admission authority of the applications to it and, for the selective schools, the test score of each child. When there are more applications than places, an authority will use its published 'oversubscription criteria' to identify the children who should be offered places.
16. The planned admission number for TWGGS is 140. If there are more than 140 girls wanting and eligible for places (i.e. scoring at least 117 in all three tests and an overall score of 360 or above), the TWGGS Governors have decided that 126 of its 140 places will be allocated in the priority order of:
 - 'looked after children³;
 - sisters of pupils who will be attending the school when the younger child is admitted;
 - girls living within the same scheme of education (the "scheme of education") as the school, with priority being given to those living in designated areas or parishes.
17. In all cases, home to school distance, measured in a straight line, would be the tiebreaker.

The remaining 14 places are allocated to those girls with the highest marks in the tests, who live in the 'scheme of education area' and who would not otherwise get a place. These are known as Governor places.

Mrs K's complaint about the tests

18. The tests that Mrs K's daughter sat were organised by the Council and supervised by two invigilators and an assistant. The non-verbal reasoning tests were disturbed by two incidents. One of the Council's invigilators became confused about the time, gave premature warning of the conclusion of a section of the non-verbal reasoning test and then ended it too soon.
19. An e-mail exchange between the principal invigilator and Council officers records that, in response to representations from candidates, the invigilator allowed a further five minutes for that section after she had first ended it.
20. The e-mail exchange includes a report from the principal invigilator to Council officers. The report is not clear and the Council acknowledges that it is '*of limited usefulness*'. The Council's invigilators did not provide a clear account about what happened.

3 Under section 22 of the Children Act 1989.

21. From reading all the written submissions from all the parents who appealed to the Panel and the invigilators' accounts, it seems that another section of the non-verbal reasoning test was also affected by the disturbances, and that a further section was affected by another timing error.
22. Some parents quickly became aware that something had gone wrong in the tests. When Mrs K learned that things had gone wrong she asked the responsible Council Manager how the Council proposed to put matters right.
23. The responsible Council Manager apologised and acknowledged, on the Council's behalf, that the administration of the non-verbal reasoning test had not been managed correctly. She said that the test scores could not be expected to give a true reflection of ability. She went on to say that the Council and other admission authorities could not set aside their published admission criteria. She explained that Council's advice was that a parent whose child had been affected should express preferences for secondary schools in the usual way and, if appropriate, appeal to a Panel if their child did not get a place. The Manager undertook that the Council would make a report and other information about the testing available to supplement appeals.
24. When Mrs K complained to the Ombudsman the investigator suggested to the Council that her daughter should be allowed to resit the non-verbal reasoning test or its equivalent. The Council declined. It said that the co-ordinated arrangements did not allow for retesting and there were no suitable tests that it could use.
25. Mrs K applied for her daughter to have a place at TWGGS. Her daughter's total test score was 390 made up of 134 in maths, 139 in verbal reasoning and 117 in non-verbal reasoning. This meant that she qualified to be considered but, because more than 140 girls qualified, places were allocated in the order set by the over-subscription criteria. 126 places were allocated to girls living closer to TWGGS than Ms K's home.
26. All 14 Governor places had been allocated to girls with total scores of over 410. In March 2010 Mrs K learnt that her daughter had not been given a place at TWGGS or any other grammar school even though she had passed the tests.
27. Mrs K argued to the Council that her daughter's performance in the non-verbal reasoning test had been adversely affected by the disruption. She explained that, because of the way her daughter had been trained to answer questions, she had not benefited from the additional time allowed after a section of the test had been formally closed.
28. In February 2010 my investigator wrote to the School's Admissions Manager asking if the Governors '*might wish to take any steps to alleviate the situation.*' The Governors met and considered evidence from Mrs K, the invigilator's report to the Council and other information about the testing process. They took into account her daughter's marks from the first section of the non-verbal reasoning test, which had not been disturbed, and her marks in the other sections. The

Governors concluded that the girl's performance in the unaffected section of the test had not been sufficient to justify creating an additional Governor place for her, given that the school was full.

29. Mrs K and the parents of six other girls who were not given places as TWGGS appealed to an independent Appeal Panel and subsequently complained to me.

What happened in the appeals – generally

30. The Panel heard 46 appeals over six days. On the sixth and final day of the hearings, the last hearing was scheduled to end at 11.00am, leaving time afterwards to make decisions on all the appeals.
31. The Clerk's only experience of clerking admission appeals was from the previous year. She says that she:
- had not clerked appeals for places in selective or other secondary schools until these appeals for places at TWGGS
 - had considerable experience of servicing corporate bodies but would have preferred more training and shadowing before clerking hearings of such complexity and duration.
32. At interview, the two Panel members and the Clerk were critical of the way the Chair handled the appeals. They say:
- he did not manage the time well, so that appeals took too long and ran late
 - his introduction to appeals was overlong and inconsistent.
 - he introduced irrelevant matters, and drew on personal experience and reminiscence.
33. The Clerk said that the Chair did not relate well to parents functioning at a high level. The Chair accepts that he could have done better in chairing the Panel and in managing its business.
34. The Head Teacher and the School's Admissions Manager say that they found the Panel, particularly its Chair, inconsistent and disconcerting. They say:
- the Chair's rulings on what evidence was, or was not, in order were idiosyncratic.
 - the Panel did not always follow the Appeals Code or manage its time well.
35. Some of those involved recalled the Panel as "the Panel from hell."
36. The Panel members disagreed about procedures and by lunch on the first day the Chair had threatened to resign. He was persuaded to stay in order not to inconvenience the parents.

37. The Governors' detailed case that admitting more children would cause prejudice included the school's planned admission number of 140.
38. Each day the Chair endorsed a list of the appeals heard that day with a pre-printed note:

‘The Panel decided that the school could cope with [] additional pupils without causing serious prejudice. I confirm that I am satisfied that the Panel's decisions have been correctly recorded by the Clerk and that the information to be included in the decision letters has been agreed by me.’
39. On the last day, the Chair inserted the figure “10” in the blank space.

What happened in Mrs K's appeal

40. Mrs K appealed against the Governors' decision not to give her daughter a place.
41. The Panel considered written evidence provided in advance by Mrs K and by the Governors, and oral evidence from Mr and Mrs K and the Head Teacher on behalf of the Governors. The evidence included information about the disruption to the non-verbal reasoning tests and the timing errors.
42. The Clerk noted the Panel's conclusion that the admission arrangements had been correctly applied to Mrs K's daughter. Under the heading “Panel's comments and balancing points” the notes wrongly attribute evidence submitted by Mrs K to the Governors and record:

“...Panel asked p[resenting] o[fficer] regarding timing which contradicts letter from [Council Manager] to Mrs [K]: record of raw scores ([test location] n[on]-v[erbal] r[easoning] time error). Panel found that there was no time between the individual test sections given to the students contrary to the p[resenting] o[fficer]'s statement &, furthermore, noted that the length of disruption was precisely equivalent to ¼ of overall test time. In respect of evidence given, Panel therefore unable to ascertain if scores valid. On the balance of probabilities, the Panel felt that an administrative error occurred but unable to reach any conclusion given the evidence submitted.”
43. The Clerk's notes show that the Panel then went on to conclude that Mrs K's daughter could be admitted to TWGGS without causing prejudice. The notes do not record reasons for that decision or that the Panel balanced Mrs K's reasons for wanting her daughter to have a place case against the Governors' case about prejudice.
44. It is clear from information provided by one of the Panel members during this investigation that the Panel devised its own method of assessing whether, if she had not been disturbed, Mrs K's daughter would have achieved a better non-verbal reasoning score and thus a total score high enough to get one of the 14 Governor places.

What happened in other appeals

Mr and Mrs S's appeal

45. The papers for Mr and Mrs S's appeal included a letter offering another parent a place at a different school. The papers were sent to the panellists, their Clerk, the presenting officer and Mr and Mrs S. The state of the papers caused Mr and Mrs S to worry that some of the documents they had submitted may not have been sent to the Panel.

Mr N's appeal

46. Mr N's appeal raised the way the Governors had applied their admission arrangements. At interview my investigator was told that there was an animated discussion of this issue at his hearing. Mr N drew attention to what he believed to be an inconsistency between the ranking of criteria in descending order of priority, and the positioning of 14 Governor places. Mr N says that the Chair failed to resolve the issue and, instead, said that the Governors should clarify the way in which Governor places were allocated.
47. Mr N is of Middle Eastern origin. The Chair drew on his own experience of time spent in a different part of the Middle East. This offended Mr N, as it did not have regard to cultural differences between parts of the Middle East that were significant to him.

Mr and Mrs P's appeal

48. Mr and Mrs P's are concerned about the way in which the Panel, particularly the Chair, handled their evidence and the time available to consider it. The hearing had been scheduled to start at 3.00 pm, but began at 3.48 pm and ended at 5.15 pm. At the beginning two members of the Panel explained that the time available for the appeal was limited because they had evening engagements.
49. Mr and Mrs P's written case, submitted in advance, was substantial. It raised arguments about whether the School could admit more children without causing prejudice and as well as their reasons for wanting their daughter to attend TWGGS.
50. The Chair tried to discourage their arguments about prejudice but the Head Teacher explained that they had the right to make such arguments. The Chair accepts that he attempted to persuade Mr and Mrs P to curtail their questioning. The hearing became prolonged and confrontational. During the hearing, the Chair indicated that he would, after the hearing, ask about Mr and Mrs P's work in the media and did so, despite the pressure of time. The Chair told my investigator that it was in order to do this after and outside the hearing.

Mrs M's appeal

51. Mrs M complains with the support of an adviser. She is particularly concerned about the way in which the Panel considered evidence about a visit that the Governors' Admissions Manager had paid to her home to verify her residence.

Mrs M had left her daughter alone with the Admissions Manager. Her daughter believed that the visit meant that she would be given a place.

52. Mrs M also complains that the Admissions Manager had acted as a second presenting officer and that this is not allowed by the Appeals Code.
53. The Chair adjourned the hearing to take advice from the Council about the Admissions Manager's visit to Mrs M's home. At interview he could not remember who he spoke to but said that he obtained legal advice. The Clerk's notes of this matter are not full or clear, and do not record the Chair telling all the other participants in the hearing what advice he had received. The Clerk's notes say:

'Panel adjourned to discuss the statement about the school representative's visit during which a discussion took place with [Mrs M's daughter]. The Panel accepted the school's report about the visit and agreed to questions/remarks to be put to p[resenting] o[fficer]/Admissions Manager.'
54. One of the Panel members says the Chair asked him to tell the parties at the reconvened hearing about the Panel's conclusion on the advice. He says that, on the Panel's behalf, he criticised the Admissions Manager's visit to Mrs M's home and her conversation with Mrs M's daughter. He says that the Panel accepted the need for such visits but thought that the Admissions Manager should be discouraged from entering applicants' homes. Mrs M was not given an opportunity to comment further on the issue.
55. The advice the Chair had obtained was not set out in the Panel's decision letter and it has not been possible to establish whom the Chair telephoned.
56. The Panel member mentioned in paragraph 55 questioned Mrs M intently about what the Admissions Manager might have said. At interview, he acknowledged that he pressed Mrs M in order to satisfy himself on a point of law (promissory estoppel) that might have been helpful to her case. He says the Panel pointed out to the parties that the evidence about the visit was hearsay and gave them carefully considered reasons for its conclusions.

Mrs E's appeal

57. Mrs E's daughter had been allocated a place at a grammar school some distance from their home. Mrs E wanted to argue in her appeal that that distance was too great, and that her daughter would benefit more from a place at TWGGS. She says she felt inhibited from arguing that point, because a parent whose appeal was heard before hers told her that the Chair had discouraged her from raising transport issues.
58. At interview the Chair did not recall discouraging Mrs E from raising transport issues. A Panel member says that before Mrs E's appeal the Chair had discouraged a parent from raising transport issues and had provided his own evidence of local bus timetables.

Mr B's appeal

59. Mr B is particularly concerned about a Panel adjournment when one of the panel members was taken unwell. The Clerk's notes show that this adjournment took 16 minutes. Mr B says the hearing lost momentum afterwards, and that, on resumption, the Chair said words to the effect of: "Now, where are we?" Mr B argues that this caused considerable discontinuity.

Findings – the general conduct of the hearings

60. It is clear that the Appeal Panel, particularly its Chair and its Clerk, acted with maladministration in failing to manage the hearings, the decision making and their timing efficiently or effectively.

61. The Chair did not fulfil the role set out at paragraphs 1.18 and 1.19e of the Appeals Code:

'The panel chair plays a central part in directing the proceedings, having responsibility for conduct of the hearing and for controlling the hearing fairly and firmly. Part of the chair's role is to put the appellants at ease and ensure that the hearing is conducted in an informal but structured manner.'

and

'The panel chair is responsible for the overall conduct of the hearing, including effective time management (e.g. ensuring that everyone has the opportunity to state their case and to ask questions, but then to draw matters to a conclusion if arguments become repetitive...).'

62. The experience of many of the parents who complained to me was very different to that envisaged by paragraph 1.31 the Appeals Code which says:

'Appellants are appealing over a matter that is very important to them... The role of the appellant at the appeal hearing is a particularly difficult one and this needs to be taken account of at all times by the panel.'

63. There is no evidence that the Panel tested the School's case that admitting more than 140 girls would create prejudice or that it followed the two stage decision-making process set out at paragraph 3.1 of the Appeals Code:

*Panels **must** follow the two-stage process as set out below for all appeals...*

- a) **First Stage: establishing the facts**, at which the panel considers whether the school's published admission arrangements:

- (i) *comply with the mandatory requirements of the School Admissions Code and Part 3 of the SSFA 1998.*

(ii) *were correctly applied in the individual's case, and decides whether "prejudice" would arise were the child to be admitted. If this is proved, the panel moves on to the second stage.*

b) **Second Stage: balancing the arguments**, at which the panel exercises its discretion, balancing the degree of prejudice to the school against the appellant's case for the child being admitted to the preferred school, before arriving at a decision.

Findings – the tests and Mrs K's appeal

The Council

64. The Council's invigilators did not properly organise the tests that Mrs K's daughter sat – they gave the children wrong information about timings, stopped the tests at the wrong time and then restarted them. They failed to give a coherent account of the disturbance and of their actions. This was maladministration.
65. The Council has no policy, plan or procedure for when tests are disrupted. It relies partly on parents appealing and partly on primary schools referring for assessment by the head teacher's panel those children who unexpectedly don't pass the tests. This does not help children who pass but with a mark below that needed to get a 'super selective' place.

The Panel

66. The Panel's decision-making and conclusion on Mrs K's appeal was far from clear. Individual members of the Panel and the Clerk have different understandings and recollections of the basis on which the Panel decided to give Mrs K's daughter a place. The Panel gave a higher aggregate score in its "points system" to another girl whom it also found could be admitted without prejudice.
67. The Clerk and the Panel acted with maladministration by failing to fulfil the roles assigned to them at paragraph 1.26e of the Appeals Code that says the clerk's role is to:
- '...record the proceedings, attendance, voting outcomes, panel decisions and reasons in a form that the panel and clerk agree is appropriate. The panel must ensure a complete and accurate record is taken of the points raised at the hearing which makes clear what view the panel took in coming to its decision about important points raised by appellants.'
68. Mrs K's appeal concerned whether the admission arrangements for the non-verbal reasoning test had been properly applied to her daughter. The Panel should have reached a decision on her case before making decisions on other appeals.
69. If it had decided that the arrangements had not been correctly applied, it should then have considered whether that had made a difference to Mrs K's daughter

getting a place. If so, it should have given her a place without considering the prejudice argument. As far as can be judged from the Panel's confused proceedings, the Panel went onto consider the question of prejudice without considering whether the mistake had made a difference to the outcome of Mrs K's daughter's application. The Panel recorded that the admission arrangements had been properly applied. This was, however, wrong as it also recorded that the testing arrangements, which were part of the admission arrangements, were faulty. The Panel should have said clearly that the mistake had made a difference to the outcome, and offered Mrs K's daughter a place on the basis set out earlier in this paragraph.

70. The Panel acted with maladministration because it did not follow the decision making process prescribed in paragraph 3.1 of the Code.
71. The Panel devised its own method of trying to assess whether, without the disruption, Mrs K's daughter would have achieved a score high enough to get a Governor's place. The Appeals Code does not deal with these circumstances, but at paragraph 3.37 it says:

‘The panel **must not** devise its own methods to assess suitability for a grammar school place unrelated to the evidence provided for the hearing. In determining to uphold an appeal, the panel **must** be satisfied that there is evidence to demonstrate that the child is of grammar school ability and, where applicable, that the appellant's arguments outweigh the admission authority's case that admission of additional children would cause prejudice.’

72. The score that Mrs K's daughter achieved in the tests was above the pass mark and so the Panel knew that she met the criteria for selective education. It acted with maladministration in trying to devise its own method of assessing the score she might have achieved without the disruption.

Findings – the conduct of the other appeals

Mr and Mrs S

73. Muddling papers from another hearing with those for Mr and Mrs S was maladministration.

Mr N

74. In commenting to Mr N about the Middle East, the Chair acted with maladministration and contravened paragraph 2.28b of the Appeals Code that says:

‘Panel members may never make sweeping or potentially offensive statements about people from a particular community.’

Mr and Mrs P

75. The Chair acted with maladministration in trying to deter Mr and Mrs P from arguing that the School had not proven the admitting more children would create prejudice, in showing an irrelevant and inappropriate interest in their private affairs and in wasting valuable time in seeking discussions with them after the hearing.

Mrs M

76. Paragraphs 1.26 and 1.27 of the Appeals Code suggest that legal advice should be given to a Panel by or through the Clerk and paragraph 2.15 says:

'But, during the hearing, the panel need only take note of the points raised rather than respond to them, and can take its own legal advice later before making its decision on the appeal.'

77. It was inappropriate for the Panel to adjourn during Mrs M's appeal and for the Chair to telephone the Council for advice. The Clerk acted with maladministration by failing to make a note of who the Chair had spoken to and what he had been told.
78. At paragraph 1.27 the Appeals Code says that when a panel withdraws to make its decision *'Where further advice has been offered, the Panel **must** repeat this to the parties (via the Clerk) and give them the opportunity to comment on it.'* Although the Panel had not reached the decision stage (and so paragraph 1.27 did not directly apply) it had adjourned to take advice without Mrs M present. In the particular circumstances the Panel acted with maladministration by not informing Mrs M and the Governors of the advice and giving them an opportunity to comment before making its decision on the point.
79. In his questioning of Mrs M on what he felt might be a point of law (promissory estoppel), one of the Panel members went beyond paragraph 2.32 of the Code: *'Panel members may ask questions at any time during the hearing to clarify what is being said or if they want to ascertain further information in order to reach a decision.'* and failed to take account of the difficult role that parents have in appeals (paragraph 3.1 of the Code). It is not necessary for appeal panels to concern themselves with fine points of legal detail and in this case the point being pursued was irrelevant. The Panel acted with maladministration.
80. It is appropriate for appeal panels to providing feed-back to admissions authorities to improve 'first instance' decisions. It is not, however, appropriate for a Panel to do that during a hearing. The Panel acted with maladministration in commenting critically during Mrs M's hearing on the School's Admissions Manager going into applicants' homes.
81. There was no maladministration in the School's Admissions Manager assisting the head teacher in her responsibilities as the presenting officer and answering questions addressed to her about her own work.

Mrs E

82. Mrs E was not affected by maladministration specific to her appeal. It is, however, clear that the Chair acted with maladministration in another hearing by becoming deeply embroiled in the issue of bus timetables and proffering his own evidence to the Panel and this did affect Mrs E. I do not think that a Panel can be held accountable for information provided to a parent outside the appeal hearings by another parent.

Mr B

83. The Panel did not act with maladministration when one of the members became unwell. Although this did disrupt Mr B's hearing the event was outside the Panel's control and it was handled appropriately.

Appeals – the Governors' response

84. On learning of my investigator's concerns about the appeals, the Governors offered to arrange six fresh appeals with a Panel of completely different members and with a different Clerk.
85. Parents of three of the girls' parents accepted the Governors' offers. The appeals were reheard on 7 September 2010, and all three girls were given places and became pupils at TWGGS soon after the beginning of the school year.
86. The Governors say, in commenting on a draft of this report, that they had, in good faith, delegated the administration of the appeals to the Council. They say that, while their previous experience had been positive and professional, they had been very disappointed with the 2010 process. The Governors decided not to use Panels or Clerks provided by the Council again and will make their own arrangements.

Appeals – the Council's response

87. The Council says that, when the actions and record keeping of a panel and Clerk departed from good practice and the statutory guidance, it will provide training to emphasise what is expected of them.
88. The Council maintains that "*the Panel chose to uphold ten appeals and took the view that there would have been a degree of prejudice to the school to admit*" more than the 145 pupils whom "*the head teacher had suggested she was prepared to take.*" The Council says it was "*the Panel's prerogative to make such decisions*".

What happened – communicating the Panel's decision making

89. By about 8.00 pm on the Panel's final day it had not fully documented all its decisions. The Chair telephoned the Council's Assistant Democratic Services Manager about the possibility of reconvening the Panel the next week to finalise the decisions. The Assistant Democratic Services Manager advised that would not be possible, and that the Clerk should finalise the decisions in consultation with his office. There is no written note of these discussions.

90. The Panel did not complete its work and left officers of the Council's Legal and Democratic Services Section to finalise and to despatch the decision letters.
91. In making decisions, each Panel member either indicated his view that an appeal should not be allowed, or gave a score of between 1 and 4 to those he considered should be allowed. The Clerk added up the points and the Panel awarded places to the ten girls with the highest scores. The Panel decided that in those cases, admitting the girls would not create prejudice. In all other cases, it decided that prejudice would arise and was not outweighed by the parents' reasons for wanting places for their daughters.
92. The Clerk's notes of the hearings are extensive, but patchy. They omit important matters, such as the Panel's communications with others. The notes of the decision making are also patchy and, most significantly, inconsistent with the decision letters. It is not possible to understand precisely how the Panel made its decisions.
93. When it clerks an appeal panel the Council uses a range of standard letters. The Clerks identify which standard letter should be sent in each case and adds any additional wording agreed by a panel for a decision on a particular appeal. The Council's Legal and Democratic Services Section produces the letters, adds the Clerk's facsimile signature and posts them.
94. The Council says Clerks can seek advice from its Legal and Democratic Services Section to select the appropriate letter. When interviewed the members of the Panel were familiar with the standard letters and said they had expected to choose which letter to use and any additional wording.

Communicating the decision on Mrs K's appeal

95. The Clerk's notes of the decision making record that standard decision GL07 should be sent to Mrs K to tell her the outcome of her appeal.
96. The decision letter sent to Mrs K by the Council's Legal and Democratic Services Section was standard letter GL11. It included:

“The Panel decided that a place should be made available for [Mrs K's daughter] at [TWGGS]. In reaching its decision an Appeal Panel is obliged to consider first whether admission of an additional child would prejudice the provision of efficient education or the efficient use of resources. If it decides there would no such prejudice the appeal must be upheld unless there are other appellants whose cases are stronger. However, if the Panel concludes there would be prejudice, it must go on to consider whether that prejudice is outweighed by the strength of your representations. In this particular case members felt that although there was a degree of prejudice to the school, the circumstances of this case were sufficiently exceptional to justify upholding the appeal. In reaching its decision the Panel took into account the published admission

arrangements but felt that, in view of the case you put forward, your appeal should be granted.”

97. This information is different from the decision recorded by the Clerk that Mrs K’s daughter could be admitted *without* prejudice to the school.

Communicating other Panel decisions

98. My investigator examined a sample of the Clerk’s notes and the decision letters sent to other parents who had not complained to the Ombudsman.
99. He examined the papers for the ten girls that the Panel decided should be given places. The Clerk’s notes show that in all ten cases the Panel had decided that standard letter GL07 should be sent but the Council’s Legal and Democratic Services Section had sent standard letter GL11 instead. In one of these cases, the Clerk’s note that letter GL07 should be sent was annotated with a question mark and the further note “GL11” in a different hand.
100. None of the ten decision letters explains the Panel’s view on the girls’ ability – including two girls who had not passed the selection tests. The Clerk’s notes recorded that the Panel had satisfied itself that, in exceptional circumstances these two girls had reached the academic standard required for selective education and that their admission would not cause prejudice to education.
101. My investigator also examined the notes and decision letters for appeals that had not been allowed. In one case the parents of a girl who had passed the selection tests had challenged the Governor’s argument that admitting more girls would prejudice efficient education or use of resources. The Clerk’s notes record that the Panel considered that she was of selective ability but did not accept that her parents’ reasons for wanting her to have a place outweighed the prejudice that admitting her would create and that standard letter GL14 should be used. The Council’s Legal and Democratic Services Section’s file contains a copy of standard letter GL15 that appears to have been sent to the parents. The letter includes the incorrect statements that their daughter “*had not attained the standard required for admission to [TWGGS]*” and that the Panel “*was satisfied that the governing body had shown that [the candidate] did not meet the criteria for transfer to a grammar school*”.
102. In another appeal the Clerk’s notes do not record the Panel decision. It appears from the context that the Panel had intended not to admit the girl and that is what the decision letter says.

Communicating Panel decisions – the Council’s response.

103. The Council, while apologising for the errors, says that sending a different standard letter from that specified by the Clerk did not make a material difference, as in most of those appeals, the Panel decided to admit the girl. It also says that discrepancies in recording whether the Panel found that admitting more girls would cause prejudice are minor. It takes a similar view of “serious prejudice” (although this concept arises only in appeals where a mistake has been made in

applying the admission arrangements and the admission of all adversely affected appellants would lead to gross overcrowding).

Findings – Communicating Panel decisions

The Council

104. The statutory Appeals Code is clear about responsibility for communicating Panels' decisions:
- 2.35 The panel **must** communicate the decision of every appeal, including the reasons for that decision, in writing to the appellant and the admission authority.
 - 2.36 The panel chair or the clerk to the panel (not someone from the admission authority) must sign the decision letter, to be sent by the clerk...
 - 2.38d The panel chair **must** ensure that the letter gives clear and detailed reasons for the panel's decision, addressing the key questions that the panel considered.
105. The Council's practice of sending letters with the Clerks' facsimile signatures means that the checking required by the Code is not being done and that is maladministration.
106. The Council's Legal and Democratic Services Section's changed the standard letters decided upon by the Panel and substituted others. This was maladministration.

Conclusions – maladministration

107. I have found maladministration by the Council in:
- failing to administer properly the non-verbal reasoning test sat by Mrs K's daughter;
 - failing to have any policy and procedure to enable children whose tests are disrupted to be able to sit alternative tests;
 - providing the Governors of TWGGS with a Clerk and Panel who proved incapable of fulfilling the requirements of the Code and whose conduct of the appeal hearings was riven with maladministration;
 - sending decision letters from its Legal and Democratic Services Section with the facsimile signature of Panel Clerks – in breach of the clear requirements of the Code that letters must be signed by the Clerk or the Chair;
 - substituting standard decision letters chosen by its Legal and Democratic Services Section for those agreed by the Panel and notified to it by the Clerk.
108. I have found maladministration by the Panel in:
- issuing papers about other appeals with the papers for Mrs S's appeal;

- failing to manage the hearings, the decision making and their timing efficiently or effectively;
- failing, through its Chair, to take account of the needs of parents during the hearings;
- failing to test the School's case that admitting more than 140 girls would prejudice efficient education or use of resources;
- failing to follow the two-stage decision making process prescribed by the Code;
- failing to adequately record its proceedings, and particularly the advice it obtained during the hearings;
- failing to deal with the issue raised by Mrs K's appeal of whether the disruption to the tests that her daughter sat meant that the admission arrangements had not been properly applied to her daughter and whether or not it had made a difference to her getting a place, and failing to deal with the appeal accordingly;
- causing Mr N offence by the Chair's inappropriate and irrelevant comments about his experience of part of the Middle East;
- trying to deter Mr and Mrs P from arguing that the School had not proven the admitting more children would create prejudice;
- showing, through the Chair, an irrelevant and inappropriate interest in Mr and Mrs P's private affairs and in the Chair wasting valuable time in seeking discussions with them after the hearing;
- adjourning during Mrs M's hearing to seek advice and not informing her and the Governors of that advice;
- going beyond its role and remit in commenting critically during Mrs M's hearing on the actions of the School's Admissions Manager;
- becoming hopelessly muddled in its decision making and failing to adequately record its reasoning;
- failing to complete its decision making and leaving it to the Council's Legal and Democratic Services Section.

Conclusions – injustice

109. The Council's maladministration in invigilating the non-verbal reasoning test caused injustice to Mrs K and her daughter by the uncertainty about the reliability of the result that was of crucial importance to whether she would get a 'super selective' place at TWGGS. This was compounded by the Council's failure to have any means of dealing with the situation other than an appeal to an independent Appeal Panel. This prolonged the uncertainty for five months longer than necessary.
110. Mrs K was not given an accurate explanation of the Panel's decision on her appeal. The letter that she was sent by the Council's Legal and Democratic Services Section was different to the one that the Panel had decided to send. My investigator found that other parents who had not complained to me were also affected.
111. The Appeal Panel's eccentric and idiosyncratic consideration of the appeals and poor time keeping caused uncertainty for most of the parents who complained to me. A number of the parents were caused the injustice of not being treated fairly, equitably, and with proper respect.

Conclusions – remedies

112. The Governors of TWGGS responded swiftly when informed of my investigator's concerns and offered fresh hearings to six of the parents who complained to me. I am satisfied that this was an adequate and appropriate remedy for the injustice caused to the parents. I appreciate the Governors' positive approach.
113. The Governors of TWGGS told me that for future appeals they would not use the Council to provide a panel and clerk. I am satisfied that this action reduces the chances of similar problems arising in future appeals about admissions to this School.
114. The Council apologised to Mrs K for the disruption to her daughter's tests. As the Appeal Panel decided to give her daughter a place at TWGGS, I consider that this is an appropriate and adequate remedy for the injustice caused to Mrs K.
115. I am concerned that the maladministration by the Council identified in this report could recur and cause significant injustice to other parents. I therefore recommend that the Council should:
 - require its officers to consult on and introduce a procedure for reviewing incidents or errors affecting selective testing together with a means to enable, in appropriate circumstances, candidates to be retested;
 - require its officers to report to it on how its test invigilators will be trained and supported to deal efficiently and calmly with untoward events during testing;

- require its officers to report to it on how it can ensure that any clerking and appeals service which it provides is effective and complies with the law and statutory guidance;
- instruct its Legal and Democratic Services Section to stop sending Appeal Panel decision letters with the Clerks' facsimile signatures and ensure that any letter that it prepares on behalf of a Panel is the one selected by the Panel.

**Anne Seex
Local Government Ombudsman
10th Floor
Millbank Tower
Millbank
LONDON SW1P 4QP**

29 June 2011