

Logbook

Name: [REDACTED]

Membership no: [REDACTED]

Learning Outcome: 2.3

1. Competency:

Address all issues in communication

2. Evidence provided:

Advice letter to client

3. Outline how the evidence demonstrates you meet the outcome

Identify and address all relevant factual, legal or evidential issues arising in a case:

The client was dissatisfied with a decision by an independent appeal panel (IAP) in relation to her daughter's admission to secondary school. She approached us for initial advice and to find out potential action she could take in relation to the matter and so her daughter would be either allocated a place at the school or placed on the waiting list. There were a number of issues to be addressed including the procedures followed by the IAP and also the potential failure of the school to make reasonable adjustments following a diagnosis of Dyslexia.

I advised the client on all issues over the telephone and followed this up in writing so that she could refer back to the advice if necessary and could decide whether to instruct us to do further work.

Apply relevant law and procedure in the context of your communication:

The relevant law is clearly applied to the facts in the letter and both potential actions and procedures are explained in detail. The relevant law in this case was the Equality Act 2010 and also the Schools Admissions Code and Appeals Code 2012. Potential actions were Judicial Review, and a disability discrimination claim in the Special Educational Needs and Disability Tribunal, together with continuing complaints.

4. Reflection and evaluation (what you learnt from the activity you undertook to meet the outcome). Note: you may want to complete this section at a later date once you have had time to reflect on your practice and experience.

If verbal advice is followed by a letter to confirm this then the client is able to refer back to it in future and this will also assist them in making a decision on the action they wish to take.

5. Completion date:

27.08.2013

6. Signed (applicant)

[REDACTED]

Date:

15/11/13

7. Signed (supervisor)

[REDACTED]

Date:

16/11/13

XXXX

Our Ref: [REDACTED]

Your Ref:

Date: 27 August 2013

Email: [REDACTED] co.uk
(Please ensure that our full reference is quoted when using Email)

By email to: XXXX

Dear Mrs XXX

As discussed, I am writing with advice regarding your daughter XXX admission to secondary school following careful consideration of your papers and our recent telephone conversation. I have also drafted a letter that has been sent to XXX Grammar School by email and post, and a copy is attached for your records.

Background

You made an application for a year 7 place at XXXX School for XXXX through your council's coordinated admissions arrangements. The school is an Academy and places are allocated following an entrance exam, which involved testing in Verbal Reasoning, English and Maths.

XXXX was expected to do well in the exams, as she has been achieving highly since moving to her last school. A move between primary schools was necessary due to severe bullying at her previous school. On the day of the testing, XXXX was aware that the bully was also attending and this caused her to feel ill during the majority of the exams. She has stress related IBS and a subsequent GP appointment confirmed that this had happened. A

letter was sent to the school explaining that XXX had been unwell and asking that this be taken into account when marking took place.

Unfortunately, XXXX did not pass the English part of the test so was not offered a place at the school. You were very concerned about this so commissioned an educational psychology assessment and report, which found that XXXX has Dyslexia and recommended she be given extra time in exams. You contacted the school to let them know about this and asked for the opportunity for XXX to retake the English test but the school refused stating that, as part of the school's admission policy, retests were not allowed within 12 months.

You appealed to the Independent Appeal Panel (IAP) for a place at the school and raised a number of arguments relating to the potential capacity of the school and also XXXX diagnosis. There were a number of issues in relation to the appeals process and the hearing itself, and you considered these to be in breach of the Schools' Admissions Appeals Code 2012. Some of the issues were procedural, but you mainly have concerns about the apparent failure of the panel to consider a document showing that class sizes were not equal and some already had more than 30 children in them, with others having fewer. Also, you have concerns that the panel accepted evidence in relation to the size of classrooms in a subsequent appeal and so you did not have the opportunity to argue against this information.

Unfortunately, your appeal was unsuccessful, with the panel finding that although they accepted XXXX is of the required standard for Grammar School, they did not consider the prejudice caused to her should she not be granted a place would outweigh the prejudice caused to the education of others already at the school, or the resources of the school. You have since asked that XXXX be allowed to go onto the school waiting list, and she is likely to be near the top of the list should she go on it. However, the school continue to refuse to allow this, stating that only those who have passed the test can be placed on the waiting list.

You have made a complaint to the Education Funding Agency about the matter and they have partially upheld that but have not recommended any remedy as they consider there would be no material change in the circumstances had the failures not occurred.

Advice

I consider that there may be potential action you could take against both the decision of the IAP and also the school's refusal to allow XXXX to go on to the waiting list. These are

discussed fully below, but we have also discussed that although you may be able to consider legal action, this would take some time and potentially months to resolve. As the new academic year is due to start next week, there would not be enough time for these options to be completed so would not result in the remedy you require. Also, the actions considered are costly, especially Judicial Review, so this may also not be the best way forward for you and XXXX.

We have discussed that a letter to the school explaining where we consider them to have failed in their duty and giving them a short amount of time to remedy the situation may be a more appropriate course to pursue. Hopefully, this would result in at least the school allowing XXXX to go on the waiting list. If the school does not agree to a suitable resolution then we can discuss the matter further so that you can decide whether you want to try and take further action.

Disability Discrimination

The Equality Act 2010 (the Act) states that schools cannot discriminate against disabled students, and this can include prospective pupils such as XXXX. To bring a claim of disability discrimination the claimant must first show that they meet the definition of a disabled person, which under the terms of the Act is that they have a physical or mental impairment that has a substantial and long term adverse effect on their ability to carry out normal day to day activities. We have discussed that it can sometimes be difficult to show that those with Dyslexia meet that definition, and at this stage it is not possible to know whether a tribunal would consider XXXX condition to be severe enough to meet this. However, I note that in their letter of 22 July 2013 the school has accepted that they must consider the Act when dealing with XXXX so would support any arguments in this area.

When a pupil is considered disabled for the purposes of the Act, a school cannot discriminate against them and may have to consider reasonable adjustments. Although the school would not be expected to do anything before they became aware of XXXX Dyslexia, I consider there to be a good argument for them to make reasonable adjustments following you informing them of the diagnosis and particularly following the IAP determination that XXXX is of the academic standard required for Grammar School.

Reasonable adjustments can include adaptation of school policies so that the pupil is not disadvantaged, so in your case this might be that they allow XXXX to retake the test, despite school policy not usually permitting this. Another reasonable adjustment would be that the school agrees to place XXXX on the waiting list even though school policy says that all those on the waiting list must have passed the entrance exam. Of course, any

changes to school policy must be considered reasonable, and the school may argue that those suggested are not. If this is the case then the only way to try and change that decision would be to make a claim of disability discrimination.

Disability discrimination claims in relation to schools are made to the Special Educational Needs and Disability Tribunal and must be received by the tribunal within 6 months of the last act of discrimination. I consider the most recent refusal to offer XXXX a retest or allow her to go onto the waiting list to be the date for calculation. As the letter is dated 22 July 2013 any claim must be received by the tribunal by **21 January 2014**. The process can take 4-6 months, so any decision would not be received until well into the academic year so may not be helpful to your situation. Of course, the school could agree to admit discrimination and offer a suitable remedy during the course of the process but there is no guarantee that this will happen.

You have mentioned disability discrimination process in an email and asked how this relates to your case, as you know that any disability discrimination in relation to admissions should be raised at the appeal hearing. However, I consider that the failure of the school to make reasonable adjustments following that decision could result in a claim to the tribunal as a separate issue.

If the tribunal finds that there has been discrimination, it is allowed to order remedies that put the claimant back in the position they would have been had the discrimination not occurred. However, compensation is not something that the tribunal can order. The sort of things that are often ordered are formal apologies, staff training and/or amendments to school policies, though they could potentially order that XXXX be at least placed on the waiting list.

The main difficulty with this process in your case is that it takes a long time, and by the time you get a decision it would be well into the new academic year. As a result, and if XXXX is happily attending a different school, the most the tribunal might order is an apology. However, if you still wanted a place at the school and are willing to follow the process through despite the time it will take, then this might be an action you want to consider should the school continue to refuse to make reasonable adjustments.

Judicial Review (JR)

The potential action that could be taken against the decision of the IAP is that of JR. This is a complaint in the courts against a public body such as a school, council, or IAP but permission for this must be sought within 3 months of the issue you are complaining about.

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In the case of admissions issues, the courts expect action to be taken far more quickly and usually within 2-3 weeks of the decision letter. Your decision is dated 11 June so technically the deadline for JR is the 10 September 2013. However, although you are currently within this deadline there is a good chance that the courts would not allow permission, especially as the new school year starts next week.

The Education Funding Agency has stated that they consider the result of your appeal would not be different should the failures they have upheld not have happened, and I agree that the parts of your complaint they consider to be justified would not have made much difference. However, I do consider there could be cause for complaint on other issues, for example that documents submitted with the school information were not considered as part of the appeal, or mentioned in the decision.

I consider that the strongest argument is that of disability discrimination, by not allowing XXXX to retake the tests or go on the school waiting list. Also, the process of JR is extremely costly and would also take some time, which would not achieve your goal.

I also note that the school has failed to accept a second application from you following XXXX diagnosis. Schools can accept further applications when there are significant changes to material circumstances so it could be argued that they have failed by not allowing this, as the diagnosis is clearly a significant change. You could also try to argue that this decision is disability discrimination in itself, as the change relates to XXXX disability. However, how useful a second application would be to you is not clear, as the school has already stated that it is full so could realistically only result in a new appeal right, which would again take a long time.

Although the prospects of achieving your aims by way of a claim in the tribunal and JR in time for the new school year are extremely low, I consider that a carefully worded letter may persuade the school to reconsider its actions, though of course there is no guarantee of this. The letter includes references to both discrimination and JR in the hope that the school will realise that they could face action should they not reconsider in time for the new school year. Although we should be careful to allow the school some time to consider the letter, as you need to let the private school know if you are going to take up the place there, I will ask them to reply by lunchtime on Friday. More formal letters before action should usually give 14 days but as this is not an official letter before action, and the urgency is genuine, then I consider a shorter deadline to be acceptable in this case.

Other options and things to consider

If the school refuses to change their position on the matter following our letter, you will have to decide what action you would like to take. You can of course look further into whether to make a disability discrimination claim or JR, but there is another option you could consider. You could decide to send XXXX to her allocated school and reapply for a year 8 place at XXXX Grammar School. If there are still no places available you should be given the right to appeal to the IAP again. I understand that the school is raising its published admissions number to 180, which amounts to another class from September 2014. Although numbers would only increase in the new year 7 group, the school as a whole would be larger and so in an appeal you could argue that it could easily cope with one extra child in year 8.

I am aware that you need to make some decision about XXXX education very shortly, so the letter to the school will be sent by email and post today. I will of course let you know straight away once I get a response but I would be grateful if you could also let me know if you hear anything more.

I hope that this information is clear and useful to you but if you have any questions do not hesitate to get in touch.

Yours sincerely

[Redacted signature block]

Enc. Copy of letter to school 27.08.13.