

**Case 200500786: The City of Edinburgh Council**

**Summary of Investigation**

***Category***

Local government: Education; Complaint handling

***Overview***

The complainant raised a number of concerns about the standard of classroom accommodation in his daughter's Primary School and the way those complaints had been dealt with by the City of Edinburgh Council (the Council).

***Specific complaints and conclusions***

The complaints which have been investigated are:

- (a) the Council's alleged failure to address seven concerns first identified by Mr C in an e-mail of 6 September 2004 within a reasonable timescale (*partially upheld*); and
- (b) promises of action to be taken given in correspondence were either delayed or not implemented at all (*partially upheld*).

***Redress and recommendation***

The Ombudsman recommended that the Council review their complaints handling procedures for complaints concerning their services to children and young people. The Council responded that the Director of Children and Families had instructed a major review of the Department's complaints handling procedures.

## **Main Investigation Report**

### **Introduction**

1. Section 8 and Schedule 4 paragraph 10 of the Scottish Public Services Ombudsman Act 2002 prevents the Ombudsman from investigating the giving of instruction, whether secular or religious or conduct, curriculum or discipline in any educational establishment under the management of an education authority. However, matters of internal organisation and management in educational establishments, fall within the jurisdiction of the Ombudsman's office.

2. The City of Edinburgh Council's (the Council's) procedure for handling education service complaints is set out in a booklet entitled How to Make the Most of the Education Service first published in October 2002 and reprinted in January 2004. The booklet anticipates that most complaints will be resolved locally with the staff of the particular service, for example, the Head Teacher. Should attempts to settle the complaint locally prove unsuccessful, a complaint can be taken to the Education Service's Advice and Conciliation Service (ACS). Complainants are invited to discuss their complaint with ACS staff. The matter will then be investigated. A full reply is promised, explaining the conclusion reached, the reasons for it and details of any action taken or proposed. No further stage of internal consideration is detailed. Complainants are advised that if they do not consider their complaints have been properly administered by the Education Service then they have the right to submit their complaint to the Ombudsman.

3. The complainant (Mr C) has a daughter who commenced her third year (P3) of primary school education in August 2004 at a local non-denominational primary school. Existing overcrowding at the school had been recognised with the commissioning of work by the Council to build a new extension (subsequently opened in December 2005). In the interim two P3 classes, with a total of 55 children, two teachers and two classroom assistants were accommodated in one classroom. It was Mr C's concerns about the arrangement which gave rise to his complaints to the Council.

4. The complaints from Mr C which I have investigated concerned:  
(a) the Council's alleged failure to address seven concerns first identified by Mr C in an e-mail of 6 September 2004 within a reasonable timescale; and

(b) promises of action to be taken given in correspondence were either delayed or not implemented at all.

5. The investigation is based on correspondence with the Council supplied by Mr C and the Council's response to my enquiry. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

6. The school which Mr C's daughter attends was built in the late 1970s to the standards of the then Scottish Education Department. Originally there had been five open plan teaching spaces designed to accommodate ten classes. Further temporary units had been provided after the mid 1990s bringing the number of classes up to 13. Because of accommodation problems at the Primary School, a decision was taken to commission the building of a permanent extension. When Mr C's daughter started her P3 year in August 2004 her class was one of two classes with a total of 55 pupils and with two teachers and two classroom assistants accommodated in one of the original open plan teaching spaces. Soon after the start of the session, Mr C's daughter was injured when she tripped in class. Mr C originally raised issues with the Head Teacher, who arranged for the Fire Brigade to call on 30 August 2004 in order to inspect the accommodation.

7. Mr C first wrote to the Director of Education on 6 September 2004 highlighting seven concerns he had about the environment of his daughter's schooling at the Primary School. Mr C's concerns were:

- the risk of injury in the classroom from tripping over furniture and equipment;
- the lack of adequate ventilation;
- improper opening of the fire escape to improve ventilation leading to risk of attack from an intruder;
- insufficient cloakroom space for wet outdoor clothes to be hung to dry;
- numerous furnishings within the school were not fire regulation compliant;
- objects placed in corridors and passageways obstructed the exit in case of fire;
- Mr C's daughter was distracted by two teachers operating in the same room.

8. This letter was acknowledged on 9 September 2004 and passed to the Client Services Manager (Officer 1). Having heard nothing further, Mr C tried unsuccessfully to contact Officer 1 by telephone in early October 2004. After speaking with her colleague (Officer 2), Mr C was successful in speaking with Officer 1 on 11 October 2004 and she promised a letter later that week. On the same day he retransmitted a copy of his original letter of 6 September 2004 to the Quality and Customer Care Unit (the Unit) of the Chief Executive's office. This was acknowledged on 12 October 2004 by the Unit and was forwarded to the then Director of Education, Officer 1 and Officer 2.

9. Mr C contacted Officer 2 on 20 October 2004. Officer 2 was, however, unaware that he had to chase up the matter. The Unit advised Mr C that the Head of Education Support Services (Officer 3) was dealing with the complaint but he was on leave and his personal assistant was on sick leave.

10. On 21 October 2004 Mr C e-mailed the Director direct with a copy of his original letter of complaint and a letter outlining his frustration at the way the matter was being dealt with.

11. Officer 1 responded to these letters on 25 October 2004 apologising for the delay. She confirmed that a new extension for the Primary School was under construction and was due for completion in October 2005. She contacted the Head Teacher and responded to Mr C's points as follows:

- the classroom size was adequate but tight; space was managed to avoid accidents;
- omitted comment on the adequacy of existing ventilation;
- confirmed that window restrictions had reduced ventilation. She stated that she had requested, in order to secure the classroom door, that a fire escape 'cage' or the nearest alternative be fitted outside. She stated that this would be done before May 2005, in time for any warm days, but would mean that the fire escape would be opened;
- accepted Mr C's fourth point but indicated that the physical limitations of the building made it unlikely that lack of cloakroom areas would be resolved before the new extension was built. She invited Mr C's suggestions as to how he considered this might be resolved;

- provided an assurance that all furniture purchased for the school in the past few years was fire resistance compliant but that if Mr C had particular concerns he should indicate these to the Head Teacher; and
- provided details as to how the potential distraction of having two classes in the one classroom was being managed.

12. On 11 November 2004 Mr C wrote to the Principal Officer Conciliation and Advice (Officer 4) complaining that, despite taking nearly two months to respond, Officer 1 had not dealt adequately with his points at paragraph 7:

- trip hazards and overcrowding were major health and safety issues;
- nothing had been done about ventilation, it remained a health and welfare issue;
- concerns about attack from an intruder highlighted in Lord Cullen's enquiry report on the Dunblane Primary School incident in 1996 had not been dealt with;
- nothing had been done or suggested about the lack of cloakroom facilities;
- furnishings in the school were a major fire risk and in his view a full audit should be completed;
- fire exits and passageways were being obstructed during teaching periods due to the lack of space.

13. This e-mail was acknowledged on 12 November 2004 and passed to Officer 4. She confirmed receipt the same day. On 22 November 2004 she sent a further e-mail suggesting a possible meeting at the school in early December.

14. On 22 November 2004 Mr C responded saying that before he attended a meeting he wanted the following information:

- confirmation that the classroom complied with policy on pupil/space ratios;
- confirmation that the existing ventilation met legislative requirements;
- confirmation that cloakroom facilities met with legislative requirements;
- a full risk assessment on the classroom with children present;
- confirmation that all items of furniture complied with fire regulations; and
- confirmation that opening fire doors for ventilation met with legislative requirements.

15. Mr C also asked for the methodology of calculations and suggested that a specific officer from the Council's Health and Safety Department (Officer 5) should be consulted. He also requested a timescale for reply.

16. This e-mail was acknowledged automatically. On 23 November 2004 Officer 4 copied Mr C's e-mail to Officer 1, Officer 5 and another Officer in the Property Section (Officer 6).

17. Mr C acknowledged receipt of Officer 4's e-mail response on 29 November 2004 but observed that no timescale had been given to complete the enquiry and he asked who was taking ownership of his complaint because he did not want to keep chasing up numerous departments within the Council. Officer 4 replied on 1 December 2004 saying that Officer 1 had responsibility for replying and Mr C should make arrangements with her to meet in school.

18. On 2 December 2004 Mr C e-mailed Officer 4 saying that Officer 1 had not furnished the information he had requested (prior to meeting her in school). He expressed dissatisfaction at Officer 4's role stating that he had expected her to be the central liaison person who would try and resolve the issues. This e-mail was not answered and Mr C sent a reminder seeking a date when his complaint would be dealt with. That e-mail was acknowledged automatically on 7 December 2004 but later that day, following her return from sick leave, Officer 4 responded stating that Officer 1 was expecting Mr C to call her, and she and the Business Manager could meet Mr C at the school on 10, 13, or 16 December 2004 when all his questions would be addressed in an attempt to resolve matters at local level in the first instance.

19. On 8 December 2004 Officer 1 responded to the six points raised on 22 November 2004 (paragraph 14) as follows:

- assessment of the tripping hazards for furniture was a direct responsibility of the Head Teacher and needed to be addressed by her;
- a report from a firm of engineers had been requested, although Officer 1 had suggested an alternative to 'the cage';
- the cage addressed ventilation and intruder issues;
- nothing could be done about the lack of cloakroom provision until the extension was completed;

- furniture was also the Head Teacher's responsibility. Officer 1 said she would obtain a statement from the Head Teacher about compliance with regulations. The school held the audit of furniture. A meeting on site to point out the exact furniture causing Mr C concern would be helpful. On the current information presented by the school, Officer 1 was satisfied that there was no major fire risk;
- the school had moved obstructions from fire exits and passageways as requested by the Fire Brigade. Officer 1 stated that a site visit would prove helpful to her in clarifying Mr C's particular concerns.

20. Officer 1 copied this letter to the Head Teacher

21. On 12 December 2004, Mr C responded, copying the six points in his e-mail of 22 November 2004. He stated that Officer 1 had not answered points (a) and (c); he sought confirmation of when the investigation of the classroom ventilation would be completed. He stated that he considered a full risk assessment should have been done. On point (e) he sought confirmation that the furniture in school complied fully with the fire regulations. He reminded Officer 1 about the Cullen report into the Dunblane incident in 1996 and stated that the fire doors should not be opened for ventilation until a safe solution had been found and implemented. While he welcomed a meeting in school, he pointed out that he had already met with the Head Teacher but that she had not been helpful in answering his questions. He asked for a response within a defined timescale.

22. Officer 1 acknowledged receipt of the e-mail on 21 December 2004 following her return to work after being off work sick from 8 to 17 December. On 22 December 2004 she responded further on the six points raised by Mr C on 12 December 2004:

- the classroom complied with the Department's policy regarding the pupil/space ratio;
- the classroom ventilation met with legislative requirements. Given problematic 'comfort levels', Officer 1 said she intended to install a portable air conditioning unit in the New Year which would be in place until the new extension was completed;
- there were no legislative requirements or guidelines for cloakrooms;

- a risk assessment of the classroom would be done by the Head Teacher as it was her responsibility;
- the Head Teacher had assured Officer 1 that all items of furniture complied with fire regulations;
- Officer 1 stated she knew of no legislative requirements to prevent the opening of fire exit doors. She was, however, mindful of the Cullen Report recommendations. The portable air conditioner at (b), when installed, would obviate the need to open the door.

23. Officer 1 welcomed Mr C's offer to meet and hoped that her answers were 'definitive'.

24. On that date (22 December 2004) a Customer Care Officer (Officer 7) signed off the complaint.

25. Mr C, however, remained dissatisfied and sent a further e-mail to Customer Care on 28 February 2005 outlining the history of consideration of the complaint he first made on 6 September 2004. He stated that he had met with Officer 1 during February 2005, but was not happy with her response when he had repeated his request for the methodology used in Council calculations. He complained that:

- Officer 1 would not expand further on her stance that the classroom was not overcrowded;
- Officer 1 had not surveyed the classroom and, when pressed, did not know whether the classroom met with statutory requirements in respect of ventilation;
- cloakroom facilities were covered by the Health and Safety and Welfare Regulations. Although Officer 1 offered to install extra cloakroom facilities in the school buildings this had not been done;
- Officer 1 would not expand on the risk assessment;
- he was not happy with the assurance from the Head Teacher that all furniture was compliant with fire safety regulations and that tags had allegedly been cut off; and
- with regard to opening fire doors for ventilation, the Head Teacher and Officer 1 had no comprehension of what risk assessment entailed.



26. Mr C also stated that Officer 1 had undertaken to write to him further after the meeting, but had not done so.

27. Mr C's letter was forwarded on 1 March 2005 to the Director of Education's office and was passed to Officer 3 to reply. He wrote on 15 March 2005 indicating that he was currently finalising a review of Mr C's requests. He apologised for the delay but said he would send a full and conclusive response by 22 March 2005.

28. Mr C sent another e-mail on 17 March 2005 complaining about further delay.

29. On 18 March 2005, Officer 3 sent a full reply on the matters raised. In particular he provided calculations on ventilation and space, dealt with the cloakroom issue and the fire safety of furniture. His letter ended by stating that the Department had made a commitment to addressing Mr C's concerns regarding the opening of fire doors, was in the process of providing temporary cloakroom space, had carried out a space and ventilation survey, and had provided information regarding the Council's purchasing policies on furniture. Officer 3 expressed the hope that Mr C and the Council could now move forward in a spirit of co-operation and look forward to the completion of the new extension at the Primary School and the benefits this would bring. Mr C was advised of his right to approach the Ombudsman.

30. Mr C was not happy with that response and replied on 7 April 2005 complaining about overcrowding and lack of ventilation in his daughter's classroom. He stated also that in his opinion the Head Teacher was not qualified to carry out a comprehensive risk assessment and that Officer 5 should have examined fully the issues he had raised. He repeated his concerns about fire doors requiring to be opened because the ventilation was insufficient and that numerous items of furniture in reality did not comply with fire regulations. He also stated that he had been promised that extra cloakroom space would be installed in February 2005 but this had not been done. He said that it was his intention to complain to the Ombudsman.

31. Mr C was advised by e-mail that Officer 3's letter of 18 March 2005 was the authority's full and final response.

32. Mr C submitted his complaint to the Ombudsman on-line on 16 June 2005. He subsequently provided a copy of his extensive file of correspondence with the Council on 10 August 2005. He confirmed by telephone on 25 August 2005 that his daughter had moved on to P4 and was not in the same classroom, though it continued to be used for two classes. The information provided was examined and a written enquiry of the Council was made on 27 October 2005.

33. The Council, in their response of 18 January 2006 to my enquiry, stated that their newly titled Department of Children and Families acknowledged that initially, there was a delay in responding to Mr C's letter of 6 September 2004. Further, the Department's letter of 25 October 2004 had sought to respond to Mr C and to apologise for the delay in replying and to explain why this had happened. The Department considered that, thereafter, it had sought to deal with Mr C's suggestions in a constructive way.

34. On the original matters raised (paragraph 7), the Council stated that there were no statutory floor areas per pupil, that recommended levels for open plan were less than for traditional classrooms and that the teaching area in question met with the non-statutory guidance. The ventilation, which had been assessed in February 2005, was adequate and met relevant regulations; the furniture in the classroom some of which had been replaced was fully compliant with fire regulations. The risk assessments, which were the responsibility of the Head Teacher, had been revisited by her, were appropriate, and were to the Department's standards. The Fire Brigade who had inspected on 30 August 2004 confirmed that fire exiting which is direct from classrooms and placing of furniture were acceptable. Cloakroom areas were not necessary but a new timber cloakroom had been provided in March 2005.

35. Mr C was given a copy of the Council's reply and submitted further comments. He maintained that the teaching space his daughter's class occupied in the 2004/05 session was overcrowded with cramming in of tables and chairs and little room for adults to walk safely between desks. He did not believe that the risk assessment carried out by the Head Teacher had been adequately managed and, in his view, it had failed to comply with the Workplace (Health, Safety and Welfare) Regulations 1992. He did not consider that there was sufficient space for 55 pupils and four teaching staff. The situation could have been alleviated had the Head

Teacher accepted his suggestion to use a drama studio classroom area to teach one of the two classes.

36. Mr C also believed that cloakroom space was covered by subsection 19(2) of The School Premises (General Requirements and Standards) (Scotland) Regulations 1967 and that the school had a legal obligation to provide space for all the children to hang their coats in such a way as to allow them to dry off. Ventilation was covered by sections 22 and 23 of the 1967 Regulations. In addition, the Health and Safety Executive had issued guidance on ventilation compliance to meet Regulation 6 of the Workplace (Health, Safety and Welfare) Regulations 1992. Mr C remained of the view that numerous items within the school failed to meet the requirements of the Furniture and Furnishings (Fire) Safety Regulations 1988. Finally, Mr C alleged that the Head Teacher had no awareness of her true responsibilities in relation to health and safety and that the Education Service had not been aware of their legal responsibilities in relation to health, safety, welfare and fire safety compliance. He doubted whether the Council could investigate his complaints properly if they did not acknowledge that they were subject to these pieces of legislation.

*(a) Conclusion*

37. Mr C, as is his entitlement as a parent, has pursued his complaint with vigour. I am not sure that the Council could have fully met his demands, particularly given the overcrowding and constraints on accommodation at his daughter's school. I believe that Mr C's concerns were taken seriously. Mr C's daughter has moved on to P4, is no longer in the same teaching environment, and the new extension is now in service.

38. The Council have acknowledged and apologised for the initial delay to 25 October 2004 in responding to Mr C's e-mail of 6 September 2004. I believe, however, that thereafter the matters could have been dealt with more efficiently and with an earlier closure. A considerable number of Council education officers have been involved and the complainant was rightly concerned at lack of ownership in dealing with his complaint. It was only in the letter of 18 March 2005, fully six months after his initial e-mail, that Mr C got a full response and was informed of his right to complain to the Ombudsman. I uphold that part of the first head of complaint relating to the timescale.

*(b) Conclusion*

39. I believe that the Council's definitive response to the matters Mr C raised could have been made earlier. If they were not going to undertake assessments such as at paragraph 19(b) or preferred a portable air conditioning unit (paragraph 22(b)) as opposed to the 'cage' (paragraph 11(c)), then the reasoning for this could have been more succinctly stated. I, therefore, uphold this aspect of complaint in part.

*Redress and recommendation*

40. The Ombudsman considered that the delay and the lack of outright ownership illustrated in the handling of this complaint, provided the opportunity for the Council to review their current complaints handling particularly in respect of complaints involving services to children and young people.

41. The Council informed the Ombudsman that the Director of Children and Families had instructed a major review of the Department's complaints handling procedures. This would involve a full audit and review. Steps would be taken to ensure that complaints are fully considered locally save in exceptional circumstances and that there is openness and transparency in order that complainants are clear when the local process is completed.

31 October 2006

**Explanation of abbreviations used**

The Council	The City of Edinburgh Council
Mr C	The complainant
ACS	Education Services Advice and Conciliation Service
Officer 1	Client Services Manager
Officer 2	Her colleague
The Unit	Quality and Customer Care unit
Officer 3	Head of Education Support Services
Officer 4	Principal Officer, Advice and Conciliation Services
Officer 5	Health and Safety Department Officer
Officer 6	Property Officer
Officer 7	Customer Care Officer