

## Scottish Parliament Region: Central Scotland

### Cases W030517 & 200401927: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: School Children with special educational needs, Complaint handling

##### **Overview**

The complaint concerned the disputed transport of two pupils with special educational needs to and from their school and the alleged subsequent effect of the transport dispute on the pupils and their families; and the manner in which North Lanarkshire Council (the Council)'s Education Department dealt with the complaint.

##### **Specific complaints and conclusions**

The complaints which have been investigated are:

- (a) the way the Council dealt with the disputed transport of two pupils with special educational needs to and from their school between August 2001 and July 2002 and the alleged subsequent effect of the transport dispute on the pupils and their families (*upheld*); and
- (b) the manner in which the Council's Education Department dealt with the complaint from the families of the pupils to the Chief Executive of the Council in March 2003. This included the alleged contrast in the way the Council's Education and Social Work Departments respectively dealt with the families' separate but related complaints (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) make a redress payment of the sum of £1,000 to Mr and Mrs C, in recognition of the anxiety and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint;

- (ii) make a redress payment of the sum of £1,000 to Mr and Mrs A, in recognition of the anxiety and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint;
- (iii) issue Mr and Mrs C with a full, formal apology for the manner in which the Council, in particular the Education Department, dealt with the school transport dispute;
- (iv) issue Mr and Mrs A with a full, formal apology for the manner in which the Council, in particular the Education Department, dealt with the school transport dispute;
- (v) review the administrative procedures to ensure (a) there is a system for proper liaison and cooperation between different Council departments; (b) that relevant information is shared between those departments; and (c) that, as far as possible, the maladministration identified in this Report does not recur;
- (vi) review the system for handling complaints so that all of its departments can demonstrate to a complainant that their complaint has been fairly, impartially and thoroughly investigated; and
- (vii) review the system for handling complaints so that, where a complaint relates to more than one Council department, consideration should be given to designating a lead officer to deal with the whole complaint, thereby ensuring consistency in the handling of that complaint.

## **Main Investigation Report**

### **Introduction**

1. In October 2003 the Ombudsman received a complaint from a Member of the Scottish Parliament (MSP 1) on behalf of his constituents, Mr and Mrs C and Mr and Mrs A (the complainants), about North Lanarkshire Council (the Council). The complaint concerned Mr and Mrs C's son, B and Mr and Mrs A's son, D. The complaint detailed various grievances which the complainants had against the Council's Education and Social Work Departments.

2. MSP 1 first submitted a complaint on behalf of the complainants to the Office of the former Commissioner for Local Administration on 18 September 2002. The complaint concerned a dispute about the transport of the complainants' sons between their home and their special educational needs school (the School). The dispute had arisen at the start of the school term in August 2001 and led to the complainants withdrawing their sons from attendance at the School between November 2001 and August 2002.

3. While the complaint referred to matters from August 2001, MSP 1 also wanted the Commissioner for Local Administration to investigate (a) the inadequacy of support provided by the Council's Social Work Department; (b) the role of an Education Officer employed by the Council; (c) why no care needs assessment was made for B and D; and (d) whether support of a 'satisfactory professional level' had been provided by the Council's Social Work Department. The Commissioner decided there was no evidence that the complainants had pursued local avenues of complaint available to them. Therefore, it was left open to the complainants to revert to this office (Scottish Public Services Ombudsman) after the complaint had been duly made to the Council and if they remained dissatisfied. The file was closed in October 2002.

4. On 20 March 2003, Mrs C and Mrs A submitted a joint letter of complaint to the Chief Executive of the Council, concerning 'the way' in which the cases of their 'two severely handicapped sons' had been dealt with by the Council. The letter enclosed a number of documents, including formal complaint forms against the Council's Social Work and Education Departments, a case history from August

2001 to March 2003 and listed various complaints against the two Departments. This letter was passed to the heads of department of the two services.

5. The complainants received a response from the Director of Education on 7 April 2003, concerning the complaints about his Department. In his reply, he informed the complainants that he did not find any justification to their complaint against his Department. The complainants were dissatisfied with the response. This led to MSP 1 submitting the complaint on behalf of the complainants about the Council to this office in October 2003.

6. The complaints from which I have investigated are:

- (a) the way the Council dealt with the disputed transport of B and D to the School between August 2001 and July 2002 and the alleged subsequent effect of the transport dispute on B and D and their families; and
- (b) the manner in which the Council's Education Department dealt with the complaint made by the complainants to the Chief Executive of the Council in March 2003 about the Department. This included the alleged contrast in the way the Council's Education and Social Work Departments respectively dealt with the separate but related complaints.

### **Investigation**

7. The investigation of this complaint involved obtaining and reading all of the information and documents submitted to this office by MSP 1, the complainants and the Council. Enquires were made of MSP 1 on behalf of the complainants. Enquires were also made of the Council by letter, e-mail and telephone. I also attended the Council's offices and examined the complete social work and education files held by the Council on B and D. In addition, the Ombudsman met with MSP 1. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. MSP 1, the complainants and the Council were given an opportunity to comment on a draft of this report.

**(a) The way the Council dealt with the disputed transport of two pupils with special educational needs to and from their school between August 2001 and July 2002 and the alleged subsequent effect of the transport dispute on the pupils and their families**

8. B was born on 16 February 1985. He suffers from Cerebral Palsy and Spastic Quadriplegia. He requires the use of a wheelchair at all times. He requires a high level of care and support assistance with all aspects of daily living.

9. D was born on 6 August 1984. He has a severe learning disability and needs support with all aspects of his day-to-day life. He has had spinal surgery and has a steel spinal rod in his back which restricts his movements. He is a wheelchair user.

10. B and D both attended the School for their education. D left the School in October 2003. B left the School in April 2004.

11. For the school term beginning in August 2001, the Council contracted a new coach company (Bus Company 1) to transport B and D and other pupils between their homes and the School. B and D travelled on the same bus. Bus Company 1 withdrew from the contract shortly thereafter. A different company (Bus Company 2) was then contracted to transport B and D and a number of other pupils to and from the School starting on 20 August 2001.

12. During the first week of transporting B and D to and from the School, problems developed in the relationship between the complainants and the staff of Bus Company 2. The complainants complained to the Council about the treatment of their sons by members of Bus Company 2's staff while they were being transported to and from the School. According to Mr and Mrs A, their son, D was 'strapped in' the school bus in an unsatisfactory and unacceptable manner and his toileting and other needs were not properly met during the journeys to and from the School. B's parents complained that D's problems during the bus journeys were having an upsetting effect on their son and their son was 'terrified' to travel on the bus. The complainants complained that their sons were suffering unacceptably high levels of stress when travelling with Bus Company 2 to and from the School. This, in turn, caused the complainants significant concern and distress.

13. Following the complaint about Bus Company 2, an officer in the Council's Education Department (Officer 1), wrote to Mrs C on 5 September 2001 stating that an independent inspection of Bus Company 2's vehicle had been carried out and was found to be fully compliant. The letter continued that if Mrs C still had no confidence in Bus Company 2 and would not allow B to travel on their bus then Officer 1 would have to consider whether or not her son's placement at the School could continue to be maintained in circumstances where Mrs C was refusing to send him. Officer 1 also sent a letter in similar terms to Mrs A.

14. From 10 September 2001, the complainants took the decision to transport their sons to and from the School using their own vehicles. Mr and Mrs A entered into a formal arrangement with the Council whereby the Council would pay them travel expenses for taking their son to and from the School. In October 2001 Mrs C submitted a claim for mileage incurred in transporting her son, B, to and from the School. On 19 October 2001, Officer 1 wrote to Mrs C and told her that she did not have the Council's approval to operate as a contractor in relation to her son's transport to and from the School. Her expenses claim would, however, be given further consideration. Officer 1 stated that the Education Department was willing to have the complainants 'operate together' to collectively transport their sons to and from the School. Payment of travel expenses would be split between the complainants 'subsequent to the normal requirements of contractors being met'. The letter also stated that no further individual travel expenses claim from Mrs C would be met.

15. In November 2001, the complainants withdrew their sons from attendance at the School. The complainants contacted a Member of the Scottish Parliament (MSP 2). He wrote on their behalf to the Chief Executive of the Council on 7 November 2001. The Director of Education was asked to reply to MSP 2's letter.

16. In his response, the Director of Education stated that the complainants had not responded formally to the Council's offer to allow them to operate as joint contractors. The Director took the view that Bus Company 2 had been exonerated from the complaints made against them by the complainants. His Department felt that Bus Company 2 could safely and appropriately transport B and D to and from the School. He considered that his Department had 'exceptionally' made an offer to the complainants that would allow them to provide transport themselves for

which appropriate payment would be made. While his Department had a statutory duty to provide for young people with special educational needs until the age of eighteen, there was no statutory requirement either on the Council or the complainants to ensure attendance beyond the age of sixteen years. Both complainants had been advised that if their sons did not return to the School by Christmas 2001, funding for their placements would cease. Letters to this effect had been sent to the complainants on 15 November 2001.

17. On 27 November 2001, Officer 1 informed the complainants that the Council would approve and reimburse shared transport for both B and D to the School. He also informed them that he had instructed the Council's contracts section to divide their claim equally and to reimburse them individually on that basis.

18. MSP 2 wrote again to the Director of Education on 5 February 2002, stating that the complainants did not have vehicles which were suitable to enable them to transport their sons together in one vehicle. In those circumstances, he asked whether an offer of an individual mileage allowance could be made to each family. He indicated that the complainants' lawyer had advised that he had prepared a case to go to judicial review but he was actively seeking to avert the necessity for this.

19. On 15 February 2002, the Director replied to MSP 2. In his letter he stated that, in order to achieve a 'full and final resolution' of the matter but subject to stated conditions he would extend the offer regarding the parental provision of transport to encompass B and D separately.

20. On 15 February 2002, a solicitor acting for the complainants wrote to the Council threatening court action. Officer 1 replied to the solicitor's letter on 19 February 2002. In his response, he stated that the Council would defend any proceedings raised. He also asked for the complainants' response to the offer made by the Director of Education in his letter to MSP 2 of 15 February 2002. The offer, which was communicated by MSP 2 to the complainants in a letter of 21 February 2002, was unacceptable to them.

21. On 10 April 2002, the complainants wrote to the Council seeking a meeting with the Chief Executive and a resolution of the complaint. They confirmed that

they had returned, through their lawyer, the travelling expenses cheques they had received from the Council because they had only been offered half of what they felt they were due.

22. On 8 May 2002, the Council's Chief Executive replied that, as the Scottish Legal Aid Board had notified the Council that the complainants were seeking legal aid to initiate court proceedings to judicially review the Council's actions, he considered he was unable to comment further on the matter.

23. However, on account of a suggestion from the Chief Executive, a meeting was arranged between his Assistant Chief Executive and the complainants in June 2002. Following this meeting and the intervention of the Assistant Chief Executive, a new transport firm, Bus Company 3, was engaged by the Council to transport B and D to and from the School. Bus Company 1 had been offered as the new transport contractor. This was rejected by the complainants on the grounds the proprietor of Bus Company 1 had been aware of Bus Company 2's treatment of their sons in August/September 2002 and had declined to become involved in the dispute. In August 2002, the start of the new school term, B and D resumed attending the School. The complainants also abandoned their application for legal aid to fund the action of judicial review threatened by their solicitor in February 2002.

*(a) Conclusion*

24. I am satisfied that the Council did carry out an investigation into the complaints they received from the complainants concerning Bus Company 2. According to the documents I have seen, the Council arranged for an emergency spot check inspection of three vehicles operated by Bus Company 2. These vehicles were used to transport pupils, including B and D to and from the School. This inspection was carried out by Strathclyde Passenger Transport on the afternoon of Friday 31 August 2001. The inspection report shows that the vehicle used to transport B and D to and from the School was inspected. It is noted by the inspector that a courtesy screen had been put in this vehicle to protect pupils' legs and that this type of screen is often fitted to this type of vehicle. The only irregularity observed was that the drivers on each of the bus company's three vehicles and an attendant on one vehicle were not displaying their Council



identification badges. However, it was noted that these had been applied for and no warning was recommended.

25. The documents supplied to me show that members of the School staff were questioned about the situation. There is no evidence that they had noticed that B and D's behaviour had altered when Bus Company 2 took over the transport contract and they were not aware of any problems. In addition, the operator of Bus Company 2 was also contacted. She considered the School bus contract was running 'fine'.

26. I accept that the Council did not find evidence which supported the complainants' claims against Bus Company 2, a company which was 'highly regarded' by the Education Department. I also accept that the Council, in an effort to address the complainants' concerns, met with them and their elected Council representatives on 29 August 2001 and proposed that additional measures be put in place. These included (i) an additional escort on the bus on which B and D travelled to and from the School and (ii) the School being asked to pay particular attention to pupils coming off and on Bus Company 2's vehicles. These proposals were rejected by the complainants.

27. Nevertheless, having taken account of all of the evidence, I am of the view that there is evidence of maladministration on the part of the Council in the way that they dealt with this head of complaint. I consider that the Council, taking into account the special needs and vulnerability of B and D, could and should have resolved the transport dispute at a much earlier stage. However, owing to a series of failings on the part of the Council, the matter was not resolved for a period of some ten months. This has caused inconvenience, distress and frustration to the complainants and requires to be remedied. Accordingly, I uphold this head of complaint. In reaching my decision, I have taken into account the following matters.

28. I accept that the Council were technically compliant in the action they took to try and resolve the complainants' concerns about Bus Company 2, as I have set out in paragraphs 24 to 26 above. However, I consider it should have been apparent to the Education Department of the Council in September 2001 that such was the complainants' loss of confidence in Bus Company 2's ability to overcome

their sons' fear and distress and cope with their disabilities that no additional measures, short of replacing Bus Company 2, was going to address their concerns. This was highlighted by the fact that in September 2001 the complainants took on the onerous task of transporting their sons to and from the School which involved daily round trip distances of 80 miles and 64 miles respectively for the two families. This was not a decision I believe they would have taken lightly, particularly given their sons' physical difficulties, unless they genuinely considered their sons were suffering significant distress when travelling on the school bus. I have also noted that both B and D appear to have attended the School for the previous 11 years with no apparent problems with transport issues. However, rather than continuing to try and resolve matters, the Department aggravated the situation by their subsequent actions.

29. I accept the Education Department did offer to pay the complainants travel expenses. However, they insisted that the complainants jointly transport their sons to and from the School with only one mileage allowance claim being paid to them. The Council insisted on this arrangement even though the complainants had written to Officer 1 in September 2001 explaining why the shared transport arrangement was not practicable. In this letter, the complainants explained they had tried to transport their sons together in the one vehicle but the arrangement was not feasible. Mrs A's car was not suitable for B because it affected his hips when he was lifted in and out of the car, whilst the step and the ramp on Mrs C's specially adapted van were too high for D. I note that Officer 1, in his reply to the complainants on 3 October 2001 setting out why the Department would not change their stance on shared travel costs, failed to address the issue of the boys' physical difficulties.

30. Despite the Education Department being made aware of these difficulties and the complainants withdrawing their sons from the School in November 2001, the Council did not make an offer to pay the complainants' individual travel expenses until February 2002. However, by then, the Department's insistence on treating the complainants as transport contractors rather than as parents of children with complex special needs, had led to a breakdown in the relationship between the complainants and the Department. It was, therefore, understandable why the Department's belated offer to pay the complainants' individual travel expenses was unacceptable to them.

31. The Department also were reluctant to consider any alternative solutions, such as a one-off transport contract, which might have led to an earlier resolution of the dispute so as to ensure the return of B and D to the School as soon as possible. (I note that the Council eventually arranged for alternative transport but this was ten months after the dispute first began.) The priority, at all times, should have been B and D, two very vulnerable young men. In my view, the Department lost sight of that and failed to make any allowance for or take into account the difficult and demanding circumstances of the complainants and their sons.

32. This was also evident from both the terms and the tone of the letters from the Education Department to the complainants and their representatives. I do not agree with the complainants' contention that the letters they received from Officer 1 during this period were 'intimidating' and 'bullying'. However, I consider that a number of Officer 1's letters were bureaucratic and unsympathetic. In particular, I consider the threat to remove B and D's placements at the School so very early on in the dispute was not only insensitive but premature, as in the case of his letter of 5 September 2001 (paragraph 13 refers). This unfortunately set the wrong tone and approach which continued throughout the dispute until resolved by the Assistant Chief Executive's intervention in June 2002.

33. The result of all of the above was to alienate the complainants and make early resolution of the complaint more difficult to achieve.

34. There could and should have been better communication and liaison between the Council's Education and Social Work Departments early on in the dispute. If there had, this would and should have alerted the Education Department to the detrimental effect B and D's non-attendance at the School was having on them and on their families. It is understandable that the complainants felt unsupported by either Department. An examination of D's Social Work file demonstrated this.

35. A Contact Sheet was kept by D's social worker at the time of the dispute. It recorded contact with D and his family. An entry on 27 August 2001 records Mrs A telling the social worker about the transport dispute, their concerns about it and that they and Mr and Mrs C had withdrawn their sons from the School. The social worker, in my view, must have considered the dispute to be of significant concern

to Mr and Mrs A and their son because the notes show that she 'suggested' to Mrs A that she 'contact' a Children's Rights worker in the area and she also 'advised' her 'about legal representation who specialise[d] in the disability forum'. There is no evidence that the social worker offered to discuss the matter with the Education Department to try and assist with a resolution of the dispute. Indeed, a further entry on 29 August 2001 states that when Mrs A telephoned and asked her, as her son's social worker, to attend a meeting which she and Mrs C were having with Officer 1 to discuss the transport dispute, she was instructed by a senior social worker to tell Mrs A that she and Mrs C should 'deal with issues by themselves' as the issues were between the Education Department and the transport company.

36. In addition, a report, following a review on D by his social worker on 30 October 2001, concluded that while his family relationships were 'secure' they were 'very tense and stressful due to the current situation regarding the transport issues'. It continued that from her work with the family it was 'clearly evident that [D] really enjoys school ... I believe that the transport situation has had an impact for the family and increased further anxiety within their home and lifestyle.' It was also 'recognised' that it would be 'a very stressful situation' for the family if D's placement at the School were to finish. While I have not seen similar reported evidence on B's social work file, I have no reason to doubt that the transport dispute was having a similar effect on B and his family.

37. Further, I consider that the Education Department would and should have been aware that, in not attending the School, B and D were missing out not only on their education but also on other important activities such as speech therapy, physiotherapy and the use of the therapy pool. Even though there was no statutory obligation on the Council to ensure B and D attended school beyond the age of sixteen, I consider they had a moral obligation to do so and should have tried to ensure their return to the School as soon as possible.

38. It appears to me that there was a lack of attention by the Chief Executive's office in the initial consideration that it gave to resolving the dispute, although there was clear evidence of conflict between the Education Department and the complainants. The Council's Chief Executive was aware of the dispute as early as 7 November 2001, when he received a detailed letter from MSP 2 on behalf of the complainants about the dispute. MSP 2 considered that the matter was of 'such

concern' that he faxed the letter to the Chief Executive. However, the letter was passed to the Director of Education who was asked to respond to the MSP. The Director only reiterated his Department's stance, which resulted in further delay in the resolution of the dispute.

39. Despite a very detailed and in my view heartfelt letter from Mrs C and Mrs A to the Chief Executive on 10 April 2002 seeking a meeting with him and a resolution of the complaint (paragraph 21 refers), it was another two months before the Chief Executive took action and arranged a meeting between the Assistant Chief Executive and the complainants in June 2002. The Council, despite conducting a search of their archives, do not have any records of the meeting between the complainants and the Assistant Chief Executive in June 2002 and of the subsequent action that she took. I accept the Council's evidence on this. Nevertheless, I consider that it would have been good practice, particularly in view of the history of the complaint, that a record of these events should have been recorded and retained by the Council. However, I note that following this meeting a new transport firm, Bus Company 3, was engaged by the Council to transport B and D to and from the School, thus making it possible for them to return for the new school term in August 2002. On 22 August 2002, Mrs A and Mrs C visited the Assistant Chief Executive to thank her for her 'crucial involvement' in resolving matters. I have not seen any evidence or justification why the Council could not and did not take such action at a much earlier stage in the dispute.

40. Although B and D returned to the School in August 2002, their non-attendance at the School since November 2001, led to inconsistencies and delay in the preparation and planning of their leaving dates from the School and their future needs. There were many examples of this.

41. In December 2002, the Council documents show they agreed that an extension of B and D's School placement was deemed to be in their best interests. Furthermore, it was agreed that there would be no difficulty for both young men to have a further year at the School. Internal e-mail exchanges between Council officers in the Education and Social Work Departments in January 2003 stated that 'a further year at [the School] would assist all concerned in exploring more appropriate options for supporting [B and D] in a community context in line with their personal future plans'.

42. A report of a future needs meeting held in February 2003 to discuss D states 'there is still a great deal of ambiguity about D's leaving date...[the School] will again seek confirmation from [Officer 1] so that confusion ceases'.

43. A briefing note dated 3 March 2003 on transitional planning for B and D stated there had been 'some confusion' concerning the leaving dates from the School for both of them.

44. On 28 March 2003, a case discussion took place in respect of both B and D. In attendance at this meeting were members of the Social Work Department, Officer 1, MSP 1, Mrs C and Mrs A. The notes of this meeting state that Officer 1 'confirmed' the leaving dates for both young men as being June 2003 for D and December 2003 for B. Officer 1 'acknowledged' that the confusion had been caused by previous letters issued by him regarding the leaving dates.

45. By May 2003, it was agreed that D would stay on at the School until at least October 2003 as a contingency arrangement. However, an e-mail from the Chief Executive to the Directors of Social Work and Education dated 18 August 2003, following contact from MSP 1, expresses his concerns that despite 'extensive correspondence and discussion' there still appeared to be 'outstanding issues which urgently require to be addressed'. These included arrangements for transporting B and D to and from the School for the new school term and that their care plans still required to be finalised.

46. I am satisfied that these inconsistencies and delays caused the complainants and their families' further anxiety and distress.

*(a) Recommendations*

47. In summary, I uphold complaint (a) as I did find that there was maladministration in the way that the Council, in particular its Education Department dealt with the transport dispute of B and D to and from the School.

48. Specific recommendations the Ombudsman is making resulting from this investigation are that the Council should:

- (i) make a redress payment of the sum of £1,000 to Mr and Mrs C in recognition of the anxiety, distress and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint;
- (ii) make a redress payment of the sum of £1,000 to Mr and Mrs A in recognition of the anxiety, distress and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint;
- (iii) issue Mr and Mrs C with a full, formal apology for the manner in which the Council, in particular the Education Department, dealt with the school transport dispute;
- (iv) issue Mr and Mrs A with a full, formal apology for the manner in which the Council, in particular the Education Department, dealt with the school transport dispute; and
- (v) review the administrative procedures to ensure (a) there is a system for proper liaison and cooperation between different Council departments; (b) that relevant information is shared between those departments; and (c) that, as far as possible, the maladministration identified in this Report does not recur.

**(b) The manner in which the Council's Education Department dealt with the complaint from the families of the pupils to the Chief Executive of the Council in March 2003. This included the alleged contrast in the way the Council's Education and Social Work Departments respectively dealt with the families' separate but related complaints**

49. On 20 March 2003, Mrs C and Mrs A submitted a joint letter of complaint to the Chief Executive of the Council concerning 'the way in which the cases of their two severely handicapped sons ... have been treated by the Council'. The letter enclosed a number of documents including formal complaint forms against the Council's Social Work and Education Departments, a case history from August 2001 to March 2003 and listed various complaints against the two departments. This letter was passed to the heads of department of the two services.

50. The complainants were dissatisfied with the response they received from the Director of Education on 7 April 2003 concerning his Department. In this letter, he

informed the complainants that he did not find any justification for their complaint against his Department.

51. Thereafter, MSP 1, on behalf of the complainants, submitted a complaint to this office in October 2003. In particular, MSP 1 expressed his concern that the Director of Education had carried out the investigation into his own Department and there had been no independent investigation by anyone not connected to the Department. MSP 1 requested that this office investigate the matter.

52. In subsequent correspondence with this office (a letter of 11 February 2004), MSP 1 confirmed that the complainants did not wish to pursue a complaint against the Council's Social Work Department. MSP 1 stated that the complainants wanted 'the flaws' in the Education Department's handling of their complaints to be investigated by this office.

53. A written enquiry of the Council's Chief Executive was first made by this office on 26 February 2004. The Council's response, received on 26 March 2004, indicated that their Director of Education had conducted his investigation of the complainants' complaint in line with the Council's internal complaints procedures. He stated he had responded to the complainants on 7 April 2003 and was 'happy to reiterate the findings' that there was no justification to the complaints made by the complainants.

54. Thereafter, following further representations made by MSP 1 on behalf of the complainants to this office, I carried out an investigation of the complainants' complaint against the Council's Education Department.

55. During my investigation, the Director of Education, in a letter to this office in March 2006, advised that both B and D were dealt with in terms of the Council's policy. In relation to their school leaving dates, they were dealt with in the same way as children in mainstream education in that their leaving dates from school were dependent on when their 18<sup>th</sup> birthday fell.

*(b) Conclusion*

56. I do not uphold complaint (b). This is because I accept that the Department of Education followed their complaints procedure when dealing with the complaint.



Nevertheless, while I have not made a finding of maladministration, I consider the complaint against the Department could have been handled more openly and in a manner that was sensitive to the needs and circumstances of the complainants and their sons. I explain my reasons for this below.

57. I examined a copy of the Education Department's complaints procedure, which was applicable at the time the complainants made their complaint. In terms of the Department's procedure, if a written complaint was received, it would be sent to the individual and/or the establishment, as appropriate. The member of staff would then issue a response within a given time limit. If the complainant remained dissatisfied with the outcome, he/she should appeal in writing to the Director of Education. I accept that the Education Department followed their procedure when dealing with the complaint. Accordingly, it is on this basis, and with reluctance, that I have not upheld this head of complaint. However, I consider that this procedure is not an example of good practice.

58. As part of my investigation, I looked at the way in which the Social Work Department dealt with the complainants' letter of 20 March 2003 to the Chief Executive. Following receipt of the letter, the Director of Social Work appointed an investigating officer, a monitoring and standards manager in his Department (Officer 2).

59. Officer 2 was not directly involved in the operational decisions that had been the root cause of the social work related complaints. This, in the Department's opinion, and I agree with them, allowed for both objectivity in investigating the complaints and for influence in reaching solutions. Officer 2 separated the complaints of the two families as, in his view, this allowed him to focus on individual issues of complaints/concerns whilst simultaneously advancing discussions on future service planning for B and D.

60. On 25 June 2003, following Officer 2's investigation into the Social Work related parts of their complaint, he wrote separately to the complainants. In his letters, he clearly set out what steps he had taken during his investigation, the complaints he had investigated, that he had upheld their complaints and the reasons for this. He explained, where appropriate, the reasons for the Department's failings. However, more importantly, he apologised to the

complainants and told them about the measures the Department was taking in light of his findings so as to 'remedy the service deficiencies' which had occurred.

61. Further, in his letter to Mrs A, he accepted that her list of complaints was 'extensive and concerning' and that her complaints about communication and organisation during 2002/2003 were upheld. He said he would seek to ensure that links between Education and Social Work Departments be built upon to ensure clarity over responsibilities in coordinating transitional planning.

62. I accept that there are statutory procedures for dealing with complaints about social work matters. Nevertheless, given the starkly contrasting manner and the disparity in which the related complaints were dealt with by the two Departments, it is understandable that the complainants were so dissatisfied with the way the Education Department dealt with the complaints. I can also fully understand how frustrating and unsatisfactory it must have been for the complainants to have had their related complaints dealt with in two very different ways by the two Departments concerned.

63. It is vital that a department or an official who has had a complaint made against them can demonstrate to a complainant that their complaint had been fairly, impartially and thoroughly investigated. However, it appears to me that, throughout, the Education Department has taken the stance, from which they are not prepared to deviate, that because the complaint against Bus Company 2 was not upheld, this somehow absolved the Department from taking a fresh look at the allegations contained in Mrs C and Mrs A's joint letter of complaint to the Chief Executive. I consider that the Education Department should, therefore, take note of the manner in which the Council's Social Work Department dealt with the complaints against them and learn lessons from this.

64. I also consider that where a complaint relates to more than one Council department, as in this case, consideration should be given to designating a lead officer to deal with the whole complaint, thereby ensuring consistency in the handling of that complaint.

*(b) Recommendations*

65. In summary, I do not uphold complaint (b) as I did not find that there was maladministration in the way that the Council, in particular the Education Department, dealt with the complaint. Nevertheless, specific recommendations the Ombudsman is making resulting from this investigation are that the Council should:

- (i) review the system for handling complaints so that all of its departments can demonstrate to a complainant that their complaint has been fairly, impartially and thoroughly investigated; and
- (ii) review the system for handling complaints so that where a complaint relates to more than one Council department consideration should be given to designating a lead officer to deal with the whole complaint, thereby ensuring consistency in the handling of that complaint.

30 January 2007

**Explanation of abbreviations used**

MSP 1	The complainants' Member of the Scottish Parliament
MSP 2	The Member of the Scottish Parliament who first dealt with the complaint
Mr and Mrs C	The aggrieved and the parents of B
Mr and Mrs A	The aggrieved and the parents of D
The Council	North Lanarkshire Council
The School	The special educational needs school B and D attended
B	Pupil attending the School and son of Mr and Mrs C
D	Pupil attending the School and son of Mr and Mrs A
Officer 1	Council Education officer
Officer 2	A monitoring and standards manager in the Social Work Department
Bus Company 1	First bus company contracted by the Council to transport pupils to and from the School
Bus Company 2	Second bus company contracted by the Council to transport pupils to and from the School
Bus Company 3	Third bus company contracted by the Council to transport pupils to and from the School