

## Scottish Parliament Region: Central Scotland

### Case 200502948: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Primary School

##### **Overview**

The complainant (Mrs C)'s son (Mr A) has an inherited genetic disease and she believed that his head teacher showed a lack of care and compassion for him and a lack of respect for her as a parent. Mrs C maintained that she made a number of formal complaints about this but, that North Lanarkshire Council (the Council) failed to respond properly, explore all relevant issues and speak with independent witnesses.

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

The complaints which have been investigated are that:

- (a) the Council did not properly investigate a complaint against the head teacher and witness statements were not sought (*partially upheld*);
- (b) the Council failed to adhere to an undertaking to provide a corrected minute (*partially upheld*);
- (c) the Council failed to abide to an agreement concerning home tuition (*no finding*);
- (d) the head teacher inappropriately sought information about a private meeting (*not upheld*);
- (e) the head teacher failed to enter properly into the spirit of mediation (*not upheld*); and
- (f) the Council failed to provide a proper explanation for the reasons why a photograph of her son had been publicly displayed (*upheld*).

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

The Ombudsman recommends that the Council apologise to Mrs C for the fact that an unfavourable minute was issued; for the fact that information on home tuition was not made available earlier; and for the time and trouble she spent trying to establish the circumstances which took place with regard to the photograph.

In addition, the Ombudsman recommends that the Council:

- (i) have in place a published policy on arrangements for home tuition,
- (ii) always provide clarification of the process required in the preparation of home tuition work, for instance as was clarified to Mrs C in August 2006;  
and
- (iii) review their existing complaints procedure where it concerns head teachers, in order to exclude the possibility of them investigating complaints made against themselves.

## **Main Investigation Report**

### **Introduction**

1. On 30 January 2006, the Ombudsman received a complaint from Mrs C about the way in which North Lanarkshire Council (the Council) dealt with her complaints about her son (Mr A)'s head teacher; and that they failed to respond properly, explore all relevant issues and speak to independent witnesses.

2. The complaints from Mrs C which I have investigated are that:

- (a) the Council did not properly investigate a complaint against the head teacher and witness statements were not sought;
- (b) the Council failed to adhere to an undertaking to provide a corrected minute;
- (c) the Council failed to abide to an agreement concerning home tuition;
- (d) the head teacher inappropriately sought information about a private meeting;
- (e) the head teacher failed to enter properly into the spirit of mediation; and
- (f) the Council failed to provide a proper explanation for the reasons why a photograph of her son had been publicly displayed.

### **Investigation**

3. The investigation of this report involved obtaining and reading all the relevant documentation, including correspondence between Mrs C and the Council. I have also had sight of information regarding Mr A's special needs; minutes of meetings involving Mrs C and the head teacher; minutes of meetings between Mrs C and officers from the Council's Department of Education; Mediation Statements dated 18 May and 28 June 2005; and, minutes of meetings held involving Mrs C, the head teacher, and others to discuss the situation. I have met with Mrs C's MSP who is supportive of her complaint.

4. Although I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

#### **(a) The Council did not properly investigate a complaint against the head teacher and witness statements were not sought**

5. Mr A, who is ten, suffers from a life threatening, inherited, genetic disease which disrupts, amongst other things, the way in which his digestive and respiratory systems work. While Mr A attends a main-stream school, his time

keeping and attendance are often disrupted due to his illness and the necessity of regular hospital attendance. Because of this, Mr A receives extra classroom support. All Mrs C's five children attended the school concerned, without, she said, any problems other than the usual hiccups. Sadly, a daughter, who suffered from the same disease as Mr A, died just before he was born.

6. Mrs C said that just before the end of the school year in summer 2004, she learned that Mr A's Special Needs Auxiliary Helper was being withdrawn and because of her concern Mrs C was advised to contact her son's new head teacher. She was unable to arrange to meet with the head teacher and, therefore, approached a local MSP (not the same MSP as mentioned in paragraph 3) with a request that he establish the position. The MSP wrote to the Council's Chief Executive on 25 June 2004 and on 2 July 2004 received a reply from the Director of Education advising that there had been a slight reduction in hours and then an error in transcribing the allocated hours of the Special Needs Auxiliary but that the error had been corrected and the hours reinstated to 25 as before. It was also confirmed that Mr A would continue to be provided with an additional 30 hours home tuition in the forthcoming session. I understand from Mrs C that a Council officer telephoned the head teacher about this at home during the summer holidays and it was Mrs C's perception that the head teacher was unhappy and that this then set the tone for their relationship.

7. On 22 June 2005 Mrs C made a complaint to the Council about the head teacher and an education officer. She said that she had attended school for a particular event but that the disabled space, which she is entitled to use, was occupied. She said she, therefore, parked close to the staff parking area trying not to block access or egress. While she was waiting with other parents to pick up their children, a classroom assistant asked Mrs C to move her car because she had blocked the exit. She said she complied and then went back to collect her son. She said that on her return two parents spoke to her about the tone and attitude used towards her by the classroom assistant. Mrs C said that the next day she made a formal complaint to the head teacher about the member of staff, but, that nothing was done other than the head teacher taking the side of the teaching assistant. The head teacher had requested the names of the parents Mrs C claimed were witnesses. Mrs C then made a complaint to the education officer but was aggrieved because he accepted the head teacher's view. Mrs C alleged that at no point did anyone seek to hear from the witnesses whose names she provided and it was implied that she had lied.

8. Mrs C made a formal complaint to the Council about the head teacher and the education officer. She said that there was no proper investigation of the facts and available evidence. She alleged that there was a presumption in favour of the school.

9. In their response to me dated 5 September 2006, the Council said that on receipt of Mrs C's complaint, they followed standard procedures. They said that it was the Council's preference to resolve matters at a local level and that in the first instance complaints or allegations against school staff were investigated by the head teacher. Then, if a complainant remained unhappy with the outcome it was open to them to contact a Quality Improvement Officer who would attempt to facilitate a resolution. If this proved impossible, the next step would be for the complainant to make a written complaint to be dealt with by the Area Education Officer who would conduct an investigation. If the complainant remained unhappy, the final step would be a written appeal to the Director of Education.

10. The Council said that Mrs C's complaint against the head teacher was dealt with within the context of this procedure (paragraph 9) and that the head teacher was contacted with regard to the complaint and afforded the opportunity to provide an explanation. I understand that the complaint was discussed with her in detail. However, the witnesses whose contact details were provided by Mrs C were not contacted and the Education Officer said that this was because the complaint concerned subjective matters like tone and look; the teaching assistant concerned was, according to the head teacher, very reliable and had a good employment record; immediately after the event the teaching assistant raised her own concerns about Mrs C's role in the exchange; and the complaint was insufficiently serious to warrant further investigation, not least the time and resources involved in contacting and potentially questioning other parents. In considering Mrs C's complaint of 22 June 2005 (paragraph 7), the Council were of the view that the appropriate procedure had been used given the devolved management context of their schools.

*(a) Conclusion*

11. Mrs C said that the Council did not properly investigate her complaint and that they failed to contact the people, she said, witnessed the situation involving the teaching assistant. She felt that the Council, therefore, took the head teacher's view without looking into the circumstances. The Council considered that throughout, they had handled the matter appropriately and in accordance

with their usual processes.

12. This is a complaint with a significant history (paragraph 6) and it is perhaps inevitable that Mrs C would be suspicious about any outcome which was not in her favour. However, the Council were aware of the history and, in the circumstances, should perhaps have at least contacted the witnesses, particularly when their details had been requested. Whether they could then have given further definition to what, I accept, were subjective matters, is a moot point. The Council's investigation of this complaint appeared to rest entirely on their discussions with the head teacher but she was part of the problem as far as Mrs C was concerned. In the circumstances, to a degree, I accept Mrs C's criticism of the Council's investigation of her complaint and I partially uphold her complaint. I accept that the investigation processes anticipated by Mrs C may have been, in the Council's view, disproportionate to the event complained about but it appears to me that they were one-sided by relying solely on the evidence of the head teacher and failing to consider potential evidence from independent third parties. In the circumstances, I partially uphold the complaint.

*(a) Recommendation*

13. The Ombudsman recommends that the Council alter their existing complaints procedure where it concerns head teachers, in order to include the principles of impartiality and exclude the possibility of them investigating complaints made against themselves.

**(b) The Council failed to adhere to an undertaking to provide a corrected minute**

14. By separate letter of 22 June 2005 Mrs C made another complaint about the head teacher. She said that on 9 November 2004 she had attended a review meeting for Mr A's record of needs where there had been a heated exchange between the head teacher and herself. She subsequently requested the relevant minute from the head teacher which, on receipt, she considered to be one-sided and prejudicial. As a consequence Mrs C said she drafted what she thought to be a more accurate minute which she then submitted to the head teacher and to the Quality Improvement Officer. She said that while the former refused to acknowledge the minute, the latter signed it as an accurate record (although the officer concerned denies this). It was Mrs C's view that the head teacher had written the original minutes to portray herself in a good light.

15. In his letter dated 8 July 2005 to Mr C, the Head of Service from the Department of Education said with regard to this complaint, 'I can acknowledge that we accept that the tone of minutes of a meeting were not especially favourable to you and we have agreed that they will be re-written and re-issued'. However, Mrs C said that the promised re-written minutes failed to arrive (although schools were then on holiday) and she continued to complain. She received a further letter from the Head of Service dated 6 September 2005 who said that the minute of the meeting had been taken by a member of the school's clerical staff and issued to all participants and that, 'All of the personnel involved appeared to regard the minute as an accurate record with the exception of yourself'. He said he had subsequently met with the head teacher and reminded her to issue 'your note of dissent' to the meeting's attendees. On 7 September 2005, the head teacher issued what she referred to as a 'note of dissent' with regard to the minutes of the meeting held on 9 November 2004 (I have seen both these documents).

*(b) Conclusion*

16. It does not appear to have been in doubt that the minute was unfavourable to Mrs C and there was an agreement to rewrite it. This was later changed to a direction to circulate what was referred to as a 'note of dissent' although I am unclear why, but, Mrs C sees the intervening meeting between the head teacher and the Head of Service as significant. Nevertheless, Mrs C's concerns about the minute were passed in their entirety to all those who attended the meeting but this was some 10 months later. I note, however, that Mrs C's formal complaint was dated 22 June 2005 which coincided with the onset of the school holidays.

17. It is acknowledged by the Council that the tone of the minute was not particularly favourable to Mrs C and this should not have been the case. The minute should have been a fair and equitable factual record of events only. The Council also agreed to re-write and re-issue the minutes. They failed to implement this undertaking. However, the Council eventually took action to ensure that Mrs C's views were circulated, but they did not apologise to her for their initial shortcomings with regard to the minute. In all the circumstances, I partially uphold this aspect of the matter.

*(b) Recommendation*

18. The Ombudsman recommends that the Council apologise to Mrs C for the fact that they failed to implement their undertaking to re-write and re-issue the minutes. It is also recommended that the Council should follow good practice and in such circumstances, before wider distribution, minutes of the meeting should be agreed by both parties as a fair and accurate record. Furthermore they should be issued in a timely manner.

**(c) The Council failed to abide to an agreement concerning home tuition**

19. On 23 August 2005, Mrs C complained to the Council about the school's deputy head teacher. She said that on 22 June 2005 an agreement had been reached about Mr A's home tuition and on 19 August 2005 she had spoken to the deputy asking if she could call at the school to pick up some school work for Mr A. Mrs C said she was told that this was too short notice and that the home tutor would have to call Mrs C to make the appropriate arrangements. Mrs C was unhappy with this, and told the deputy. She took the view that the school were aware of Mr A's imminent absence from school and the fact that he would require to have some work in place. She said in the circumstances she intended to call the Quality Improvement Officer to clarify the arrangements. However, when she did, she said that he informed her that the deputy head teacher had called alleging that Mrs C threatened to complain against her. Mrs C complained that this was a false allegation and that the teacher had been negligent in failing to prepare home tuition work for Mr A.

20. I have been unable to see contemporaneous confirmation of the process required for the preparation of home tuition work in the papers available to me other than in September 2005 the Quality Improvement Officer was seeking to clarify the situation (minute of 23 September 2005 refers). This was not because the document was refused, but rather that it did not appear to exist. After the complaint was made there did not seem to be a specific response to the letter dated 23 August 2005, although, in their formal response of 5 September 2006, the Council said that the Quality Improvement Officer discussed the situation with Mrs C in mid August 2006 (a year after this matter was raised). He explained that if Mr A was absent from school for five or more days, arrangements would be made for retrospective home tuition and the home tutor would liaise with deputy head teacher to 'make the necessary arrangements relating to the appropriate administration and collection of materials'.



*(c) Conclusion*

21. I have been unable to establish what was agreed in June 2005 for Mr A's home tuition. In the circumstances I am unable to take a view on whether or not there was compliance. Accordingly, I can make no finding.

*(c) Recommendations*

22. However, I am disturbed that no such policy or confirmation appeared to exist at the time. The Ombudsman recommends that it would be good practice to have a published policy on arrangements for home tuition, further that in similar situations, the Council always provide clarification of the process required in the preparation of home tuition work, for instance as was clarified to Mrs C in August 2006 (see paragraph 20). Mrs C should receive an apology for the fact that such information was not made available earlier.

**(d) The head teacher inappropriately sought information about a private meeting**

23. On 9 June 2005 Mrs C arranged a private meeting with the Diocesan Bishop to discuss the situation which had arisen at the school. She complained to the Council on 25 August 2005 that the head teacher subsequently telephoned the Bishop's office to try to establish the details of the conversation. She said that in the circumstances, she presumed the head teacher would have no objection to her obtaining details of any conversations she had had about Mrs C. If agreement was not forthcoming, she required an apology for what she considered to be the head teacher's inappropriate behaviour.

24. Mrs C received a letter from the Director of Education dated 2 November 2005, with regard to this aspect of the complaint. He replied that the head teacher had been advised of the meeting by a priest and, because she had been concerned that she had been the subject of a conversation where she had not been allowed the opportunity to state her position, she had telephoned. He said that although a private discussion was exactly that, he thought in the circumstances, it had been legitimate for the head teacher to approach the Bishop.

*(d) Conclusion*

25. There was no reason why the head teacher should not have contacted the Bishop when she knew she had been the subject of a discussion. Whether or not she gained any information was at the Bishop's discretion and not subject to investigation by me. The same would apply to any private discussions had by

the head teacher. In these circumstances, I do not uphold the complaint.

**(e) The head teacher failed to enter properly into the spirit of mediation**

26. Mrs C said that as a consequence of the disagreements between her and the head teacher, the Council engaged the services of a mediator. She said that initially the head teacher refused to attend and so Mrs C said she complained to the Chief Executive. She said the head teacher later had a change of heart and a meeting was scheduled for 18 May 2005. Some agreement was reached and a second meeting was arranged for 28 June 2005. Unfortunately this meeting was acrimonious and the mediator ended the session.

27. Mrs C subsequently (on 26 August 2005) made a complaint to the Council alleging that the head teacher had only entered into a mediation process because of influence exerted by the Chief Executive's Office. She said that this had been a waste of her time and of public money.

*(e) Conclusion*

28. The essential nature of the mediation process is that it is entirely voluntary. Participants can withdraw at any time. Therefore, while I accept that Mrs C may have been frustrated with the head teacher's actions, I cannot criticise them. Similarly, I cannot criticise the Council (rather the reverse) for trying to offer a means to resolve the acknowledged problems between Mrs C and the head teacher. I do not uphold this complaint.

**(f) The Council failed to provide a proper explanation for the reasons why a photograph of her son had been publicly displayed**

29. Under the Freedom of Information Act, Mrs C sought from the Council all information relating to herself and her son. Amongst the information she received was a 'poster' comprising Mr A's photograph, details of his medical condition and Mrs C's personal contact information. She said this had been displayed on the classroom wall as well as in the staff room. Mrs C said until she received a copy, she had been unaware of the existence of such a poster. She had not given permission for Mr A's photograph to be taken for this purpose and would not have given it, nor would she have given approval for the display of this document. She was appalled.

30. On 10 January 2006, she formally complained to the Council. She wanted to know the circumstances which led to this happening. She, and her son's

consultant, had before this, complained to the head teacher about the poster to be told that it had not been publicly displayed and that the protocol (as the head teacher said it should be more properly described) had been put in place in accordance with the local health board's procedures (although Mr A's Community Paediatrician denies that this was with his approval or knowledge) and was to ensure Mr A's welfare. She said that the protocol was kept within the school medical emergency file in the school office, with another copy stored in the staff base. A further copy was kept in the classroom by the class teacher. She said *during this current session* (my italics) it had not been put up in the classroom. I have had sight of two letters from parents of children in Mr A's class confirming that their children had told them about the photograph and information being displayed on the classroom wall. Mrs C said that she never learned who had given permission for the photograph to be taken, or when.

31. Mrs C received a letter from the head teacher on 13 January 2006 briefly explaining the reasons for the protocol (not to leave Mr A vulnerable in any emergency situation) and that if it had caused either Mr A or his family 'significant distress and anxiety, then please accept my profound apology'.

*(f) Conclusion*

32. The balance of probabilities (taking into account the letters I have seen, paragraph 30 refers) leads me to conclude that the protocol was displayed on the classroom wall. This was totally inappropriate and unacceptable and done without Mrs C's knowledge or approval. The head teacher sent an apology to Mrs C on 13 January 2006. Nevertheless, despite my, and Mrs C's, request to know the circumstances surrounding the protocol, no information has been provided. I note the head teacher's apology but in the circumstances, given the seriousness of this situation, it did not go far enough. I, therefore, uphold the complaint.

*(f) Recommendation*

33. The Ombudsman recommends that the Council make Mrs C a full apology in recognition of the time and trouble spent in trying to establish the circumstances which took place.

*Further comments*

34. In taking an overview of this complaint I am compelled to comment on the nature of the relationship between Mrs C and the head teacher which was very poor. However, this relationship was set against the background of a child's

illness and Mrs C's anxiety, given that she had already lost a daughter to the same illness. Mr A's wellbeing and rights should have been, and must be paramount. Yet, from having viewed the voluminous documentation on this case, I do not consider that the school were fully appreciative of the seriousness of the situation. I consider that they could, and should, have done more to show a greater sensitivity and responsiveness to problems that arose.

23 May 2007

**Explanation of abbreviations used**

Mrs C	The complainant
Mr A	Mrs C's son
The Council	North Lanarkshire Council