

Scottish Parliament Region: Highlands and Islands

Case 200503386: Comhairle nan Eilean Siar

Summary of Investigation

Category

Local government: Education; complaints handling

Overview

Ms C's children were removed from a School (School X) in Comhairle nan Eilean Siar (the Council) area, and Ms C was unhappy about the standard of communication from the Council in response to her concerns about this. Following completion of the Council's complaint procedure, Ms C complained to the Ombudsman that the communication during the complaints process and following the Council's final decision was also inadequate.

Specific complaint and conclusion

The complaint which has been investigated is that communication from the Council in response to Ms C's concerns about her children's removal from School X and the subsequent handling of her complaint was inadequate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that information given to complainants at the end of each stage of the complaints process is sufficient to allow them to consider whether or not to proceed;
- (ii) emphasise in guidance to relevant staff that when faults have been identified, consideration is given to making an appropriate apology and information given of any action taken to improve Council process and procedures as a result of their complaint; and
- (iii) formally apologise to Ms C for the failing identified by the Panel on 2 December 2005.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. Ms C's children were pupils at School X. Ms C said that at a meeting on 11 May 2004 the Headteacher told her the children would be excluded and that they had been on a final warning. Ms C said she had been unaware of any final warning and had asked if this was an expulsion and told this was a suspension. The next day Ms C met with a Council officer (Officer 1)¹ and she said that following discussion it was felt that there were reasons for the children not to return to School X. Provision was made for individual tuition of the children on a part-time basis at Y school from early June. The children attended Y school full-time from September.

2. Ms C was concerned about the circumstances surrounding the removal of the children and was in correspondence with Comhairle nan Eilean Siar (the Council) about this. On 3 August 2004 she contacted the Ombudsman about her concerns. Ms C was referred to the Council's complaint procedure. Officer 1 wrote to Ms C on 19 November 2004² and the Chief Executive on 31 May 2005. Ms C continued to be concerned and a Service Appeals Panel (the Panel) hearing was held on 2 December 2005 and a letter of the same date was sent to her concerning the outcome of that hearing. On 7 March 2006 the Ombudsman received a complaint from Ms C in which she said that she had found the whole process confusing, was unsure about the outcome and whether any recommendations had been made to prevent a recurrence of the problems she had experienced.

3. The complaint from Ms C which I have investigated is that communication from the Council in response to Ms C's concerns about her children's removal from School X and the subsequent handling of her complaint was inadequate.

Investigation

4. In investigating this complaint I have reviewed correspondence between Ms C and the Council, had sight of relevant documentation including: an internal report into Ms C's complaint; the agenda, minutes and all papers placed before the Panel hearing; and the Council's procedures for such hearings.

¹ Officer 1 was an educational psychologist with the Council

² In response to the draft report Ms C stated she never received this first letter.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report. Abbreviations used are set out in Annex 1.

Complaint: Communication from the Council in response to Ms C's concerns about her children's removal from School X and the subsequent handling of her complaint was inadequate

6. On 18 May 2004, Ms C wrote to Officer 1 about meetings she had had at School X on 11 May 2004 and with him on 12 May 2004. In the letters Ms C said she had been told that the children were being placed on a final warning prior to suspension by the Headteacher. Following discussion with Officer 1 Ms C had decided they should stay at home. Ms C said she wanted to know the reasons behind the events and why she had not been given previous notice of any problems at School X. There was correspondence between Ms C and the Council and at least one further meeting with Officer 1 on 16 August 2004 before, in September 2004, Ms C contacted the Ombudsman with a letter of complaint. This letter was copied to the Council and on 7 September 2004 Ms C was contacted by the Council with details of their complaint procedure.

7. Over the next few weeks, Ms C sent a number of emails to different officers in the Council seeking clarification from them about their complaints procedure. In one of these Ms C appeared to indicate she did not see any point in proceeding. In turn, the Council responded to Ms C's emails by attempting to clarify both whether she wished to proceed and the details of her complaint.

8. On 22 September 2004, Ms C was informed that, in response to her concerns, a report would be prepared dealing with the reasons why education provision at School X had ceased. Ms C continued to communicate with the Council by email and on 28 September 2004 was advised that the report by Officer 1 would be with her in the week beginning 11 October 2004. Ms C was asked to refrain from sending emails in the interim. Ms C was also advised that, given the time this had already taken, if she remained unhappy the Council would consider supporting a referral to the Ombudsman before the completion of the formal complaints process.

9. There was a brief delay by the Council before, on 24 October 2004, Ms C received the report. On 28 October 2004 Ms C wrote a detailed response to this and said she also considered a number of other issues had not been dealt

with. On 19 November 2004, Officer 1 responded to each of her detailed questions on the report. In the report and response, Officer 1 said that School X had made the decision to exclude the children because of their behaviour. He said that Ms C had decided after discussion not to appeal the exclusion because she no longer had confidence that the children 'would be able to sustain their placement at [School X]'.

10. On 10 January 2005 Ms C attended a meeting to discuss her outstanding concerns. She said she was still unsure about the circumstances surrounding the removal of the children and the issue of whether they had been formally excluded by School X was raised. There was further email correspondence between Ms C and the Council and on 20 March 2005 she was asked if she wished to pursue an appeal. Ms C responded on 21 March 2005 by saying she was not aware that the initial stage of the complaints procedure had been concluded or that this was now at the appeal stage. The Council wrote to her on 23 March 2005 and said that the letter of 19 November 2004 had concluded the first stage, although the Education Department had said that dialogue concerning her children was ongoing. They also said that it had appeared in previous email correspondence that Ms C had been unsure about proceeding. Ms C said she did wish to proceed and on 15 May 2005 an internal report was prepared for the Chief Executive covering both Ms C's initial concerns and the handling of these. The internal report did not uphold her complaint that there had been inadequate communication about her children's behaviour but did note that a number of corporate complaint standards had been missed: Ms C's complaint of 18 May 2004 had not been acknowledged within three days or recorded in the departmental register; and notification of the determination had not been sent by recorded delivery.

11. On 31 May 2005 the Chief Executive wrote to Ms C. He said that they considered her complaint had been lodged on 18 May 2004 and determined in the letter by Officer 1 of 19 November 2004 in which Officer 1 had responded to 40 detailed concerns she had about the report. He said the delay in responding to her complaint was because this was not logged as a formal complaint while attempts were made to resolve the situation.

12. On the substance of Ms C's complaint, the Chief Executive said he concluded Ms C was given appropriate information about her children's behaviour at School X. He said that that children had been voluntarily excluded from School X 'under the threat of exclusion'. Although Officer 1 had only said

in his report that the reason for the exclusion was 'behavioural difficulties' the report contained a full explanation of events leading up to this. Officer 1 said that he felt that adequate reasons had been given for the 'final warning' of exclusion from the Headteacher. Ms C was informed by the Chief Executive that she may have the right to appeal to a Service Appeals Panel³ or to bring her complaint to the Ombudsman's office.

13. On 5 June 2005 Ms C indicated that she wished to pursue her complaint further through the procedure then, on 10 June 2005, Ms C asked if the Council would support her bringing her complaint to the Ombudsman before completing this final stage of the Council's complaint procedure. In a reply dated 14 June 2005 she was told that the arrangements to hold a Service Appeals Panel (the Panel) were under way and advised this should be allowed to proceed.

14. The Clerk to the Panel (the Clerk) wrote to Ms C on 30 June 2005 enclosing a copy of the procedure for the hearing and inviting her to prepare a formal submission. There then follow detailed email correspondence between Ms C and the Clerk concerning Ms C's submission to the Panel and detailed questions she had about the procedure.⁴ The Clerk also sent a letter to Ms C on 7 July 2005 answering some of her questions. Although Ms C indicated in August and September 2005 that she was ready to proceed, she continued to correspond with the Clerk about her submission. An attempt was made to set up a Panel to consider the appeal meeting in September but discussions were still ongoing. Indeed, when the Clerk first suggested dates in early November 2005, Ms C indicated she was still having difficulties deciding which information she would like presented to the Panel on her behalf. The Clerk could not arrange a hearing for early November and the first mutually convenient date was 2 December 2005. Ms C was still in detailed correspondence about her submission with the Clerk on 30 November 2005.

15. On 2 December 2005, the Panel heard evidence from both the Council and Ms C. They also had a number of documents before them.⁵ A letter of the

³ This is the final stage of the Council's complaints procedure and consists of a formal panel drawn from the relevant Council Committee.

⁴ As part of my investigation I have seen this correspondence.

⁵ I have seen a note of the documents present. There has been no dispute about documents included or excluded and I, therefore, have not listed these here.

same day to Ms C said that the Panel had upheld her appeal to the extent that the 'Education Department did not advise you in writing of the possible courses of actions being considered in relation to your children's educational provision'. On 10 December 2005 Ms C emailed the Clerk and thanked them for the note of the decision, the guidance given about the procedure and for making copies of the various papers available. Ms C said she would be contacting the Ombudsman's office about this matter and would copy the letter to them to allow them to comment.

16. On 14 December 2005, a letter dated 10 December 2005 to the Ombudsman's office was also copied to the Council. This stated Ms C was concerned she had no details of the decision and, in particular had not received the minutes of the meeting or information about any recommendations made in light of the finding. A letter of 4 March 2006 from Ms C to the Council restated these points. On 20 April 2006 the Council wrote to Ms C. They apologised for the delay in responding to the letter of 4 March 2006 and said that it was not practice to issue minutes unless they had been requested. They said they had no note of Ms C having done so and enclosed a copy of the minute. The letter confirmed that, in light of the decision of the Panel, the Education Department had been asked to address their procedure for dealing with similar situations.

17. In response to my questions, the Council confirmed that, following the finding of the Panel, it was decided that all exclusions from school would be formalised and all transfers of school placement confirmed in writing.

18. The Council also provided details of the circumstances surrounding the removal of the children from School X. They said that the children were not formally excluded from School X. The Headteacher had told Miss C that she intended to do so but that Ms C had contacted the Education Department and Ms C and School X had been visited on 12 May 2004. Following this, the Headteacher agreed to keep the children on the school roll and tuition was put in place until the transfer to School Y was arranged.

Conclusion

19. The Ombudsman has no authority to consider the circumstances surrounding discipline issues at School X.⁶ However, Ms C has raised concerns about how the circumstances surrounding her children's removal was explained to her and how her subsequent complaint about this was dealt with. On the first point, Ms C was provided with a report about the circumstances and Officer 1 responded to each of the forty points she raised about this matter. However, this did incorrectly state that the children had been excluded. In response to her further complaints the Chief Executive explained that there had been a voluntary exclusion. Notwithstanding this there was no explanation of what was meant by 'voluntary exclusion'. I consider that these factors must have led to some confusion for Ms C. However, when dealing with Ms C's representations, the Council have accepted that aspects of their initial communication with Ms C were not good and sought to prevent this from recurring by ensuring all exclusion and school transfers are confirmed in writing in the future.

20. I also have concerns about the Council's handling of Ms C's subsequent complaint. It is not clear that the fact they were dealing with this informally in the initial stages was communicated to Ms C or that she was made aware of her options to pursue this formally if she wished. The Council have said that their letter of 19 November 2004 was the final determination at the initial stage of their consideration of Ms C's complaint but this was not clear from that letter. No reference was made in this letter to a complaints procedure and instead it consisted of a detailed response to questions made about the report. Neither is it clear from that letter how Ms C could proceed if she remained concerned. Their final letter of 2 December 2005 is also extremely brief and again does not explain how Ms C could proceed or that she could pursue the complaint with the Ombudsman's office. Finally, although the Panel upheld aspects of Ms C's complaint, there was no apology given in respect of the failings identified nor was Ms C informed of the steps taken to prevent this from recurring. I am, therefore, upholding this complaint on the basis of: a failure initially to adequately communicate the circumstances surrounding the exclusion and, thereafter to fully communicate the complaints procedure to Ms C throughout; and a failure to apologise having identified fault.

⁶ Paragraph 10 of Schedule 4 of the Scottish Public Services Ombudsman Act 2002 states that the Ombudsman must not investigate any action concerning conduct, curriculum or discipline, in any educational establishment under the management of an education authority.

21. There has also been significant delay in the handling of this complaint. I have already considered the problems caused by the Council's failure to inform Ms C that her complaint was being dealt with informally. There remain two other significant periods of delay. The first occurred between the interview in January 2005 and the end of the second stage of the complaint procedure in May 2005 and the second came between Ms C's decision to proceed to the third stage of the process and its resolution on 2 December 2005. Although the time is substantial, having considered the documentation carefully, I do not find the Council at fault. In particular, the delays between January and May 2005 are understandable given Ms C was, at times, equivocal about proceeding. During the second period from June to December 2005 the Clerk was in regular contact with Ms C and she was provided with appropriate guidance and support in preparing her submission.

Recommendation

22. The Ombudsman recommends that the Council:

- (i) ensure that information given to complainants at the end of each stage of the complaints procedure is sufficient to allow them to consider whether or not to proceed;
- (ii) emphasise in guidance to relevant staff that when faults have been identified consideration is given to making an appropriate apology and information given of any action taken to improve Council process and procedures as a result of the complaint; and
- (iii) formally apologise to Ms C for the failing identified by the Panel on 2 December 2005.

23. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

18 July 2007

Explanation of abbreviations used

Ms C	The complainant
School X	A school run by the Council
Officer 1	The Council officer who responded to Ms C's initial complaint
The Council	Comhairle nan Eilean Siar
The Panel	The Services Appeal Panel which considered Ms C's complaint
The Clerk	The Clerk to the Council committee who arranged the Panel hearing