

## Scottish Parliament Region: Highlands and Islands

### Case 200701164: Comhairle nan Eilean Siar

#### Summary of Investigation

##### **Category**

Local government: Education; bullying; complaints handling

##### **Overview**

The complainant (Ms C) was concerned that her daughter (Miss A) was not provided with access to educational services by Comhairle nan Eilan Siar (the Council) in that they failed to protect her from bullying at the school she attended (School 1) and unreasonably refused a transport request to allow her to attend a new school (School 2). Ms C was also concerned that her complaints had not been adequately dealt with, in that there were unacceptable delays in the complaints procedure and that the Council failed to provide adequate reasons for their decisions.

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

The complaints which have been investigated are that the Council:

- (a) failed to provide Miss A with educational services by failing to take appropriate steps to protect her from bullying at School 1 (*not upheld*);
- (b) failed to provide Miss A with educational services by unreasonably refusing a transport request to allow her to attend School 2 (*not upheld*);  
and
- (c) failed to deal adequately with Ms C's complaints by constantly delaying the complaints procedure and failing to give adequate reasons for their decisions (*not upheld*).

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

The Ombudsman recommends that the Council:

- (i) implement a system to ensure that the receipt of all letters to the Council are logged on the day they are delivered;
- (ii) apologise to Ms C for the failure to acknowledge her letter of 10 October 2006 within three working days;
- (iii) review their complaints procedure to ensure that complainants are provided with a formal explanation if the response to a complaint will take longer than the stated timescales;

- (iv) devise and implement a written procedure for the appeals panel element of the Complaints and Appeals procedure; and
- (v) review their communication policies and procedures to ensure that it is clear to recipients what documents should be enclosed with letters from the Council.

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

## Main Investigation Report

### Introduction

1. On 23 July 2007, the Ombudsman received a complaint from a woman, referred to in this report as Ms C, who was concerned that her daughter (Miss A) was not provided with access to educational services by Comhairle nan Eilan Siar (the Council) in that they failed to protect her from bullying at the school she attended (School 1) and unreasonably refused a transport request to allow her to attend a new school (School 2). Ms C was also concerned that her complaints had not been adequately dealt with, in that there were unacceptable delays in the complaints procedure and the Council failed to provide adequate reasons for their decisions.

2. The complaints from Ms C which I have investigated are that the Council:

- (a) failed to provide Miss A with educational services by failing to take appropriate steps to protect her from bullying at School 1;
- (b) failed to provide Miss A with educational services by unreasonably refusing a transport request to allow her to attend School 2; and
- (c) failed to deal adequately with Ms C's complaints by constantly delaying the complaints procedure and failing to give adequate reasons for their decisions.

### Investigation

3. The investigation of this complaint involved obtaining and reading copies of all correspondence between Ms C and the Council. I made written enquiries of the Council and offered Ms C the opportunity to provide her comments on the Council's substantive responses. 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.

#### **(a) The Council failed to provide Miss A with educational services by failing to take appropriate steps to protect her from bullying at School 1**

4. Annex 3 sets out relevant extracts from the Council's Anti-Bullying Policy Guidelines (the Anti-Bullying Guidelines) and School 1's Anti-Bullying Policy (the Anti-Bullying Policy).

*Ms C's complaint*

5. In her complaint to the Ombudsman, Ms C said she and Miss A moved to the Western Isles in March 2003 and Miss A began attending School 1 in April 2003, when she was 14 years old. She said that, around February 2004, a group of girls began bullying Miss A, with incidents both inside and outside School 1, ranging from her being glared at, to being verbally and physically assaulted. In information provided by Ms C at a later date, she told me that the bullying had started in September 2003 although I have seen no evidence of this.

6. Ms C said assaults occurred inside the building of School 1, on the school bus and outside of school. She said the most serious of these incidents occurred in School 1 in early 2004 and included Miss A being head-butted, kicked, pushed into a bus, and being threatened with being killed. She said that, outside school, Miss A was assaulted on a number of occasions which resulted in criminal charges, and the perpetrators being reported to the Children's Panel.

7. Ms C said the fact that criminal charges had been brought against one of the bullies (Pupil 1) demonstrated that the bullying was very serious. She said this was supported by Miss A's general practitioner (GP) who advised that she had suffered serious internal injuries and was suffering from stress-related symptoms common in children being bullied. Ms C submitted a letter from the GP stating that her medical notes showed an attendance at Accident and Emergency on 30 January 2005 following an alleged assault. The letter also stated that Miss A had some symptoms consistent with children being bullied. Ms C said Miss A was terrified of the girls bullying her and of the prospect of returning to School 1. She said that, eventually, she felt there was no option but to send her to live with her grandparents in England and for her to attend school there.

8. Ms C said the verbal and physical abuse Miss A was subject to had a great impact on her education and quality of life. She said she had to share classes every day with the perpetrators of the bullying and was unable to socialise with others outside school as she was scared of encountering the bullies. She said that Miss A's behaviour at school and at home had been affected by the bullying. Ms C pointed out that the Anti-Bullying Guidelines should have alerted School 1 to the fact that Miss A, as a new pupil with an English accent, was a target for bullying and that Miss A's behaviour, which

included truanting, was consistent with that of a person being bullied. Ms C said that she had never been told School 1 had a policy on bullying and she took this as a sign they did not take her allegations seriously.

9. Ms C said the Council had a duty to ensure Miss A's wellbeing at school and that they did not take appropriate steps to protect her from bullying and, therefore, failed in that duty. Ms C highlighted a number of specific areas where she felt School 1 should have done more to help Miss A.

10. Ms C said School 1's initial response was to offer to escort Miss A between classes and onto the school bus. She said this made Miss A feel like she was being excluded, singled-out and punished when she was, in fact, the victim. Ms C said that, later on, when the perpetrators were being escorted, on several occasions the adult used to escort Pupil 1 was that pupil's own mother, and that this was, she felt, inappropriate.

11. Ms C said School 1 held Miss A partially responsible for the bullying and had taken the view that there was mutual antagonism between Miss A and the perpetrators. She said School 1 had made both Miss A and the other girls apologise to each other on a number of occasions. She said they failed to take account of the fact that there were a number of girls bullying Miss A and that those girls lied and protected each other. She said that where Miss A did retaliate verbally, it was in self-defence and understandable. Ms C said the fact that there was evidence of physical assault on Miss A should have been given greater weight by School 1.

12. Ms C said that while some of the girls were eventually suspended, none were excluded and, indeed, none of the girls' parents were informed of their actions for many months. She said that, given there had been previous high profile occurrences of serious bullying at School 1, there should have been a more robust approach to this behaviour.

13. In commenting on the Council's response to my investigation (see paragraphs 16 to 29 below), Ms C said they had not been able to show that Miss A's allegations of bullying were dealt with properly. She said that while the Council spoke of School 1 having engaged with various people, it was unclear what the purpose or effect of this was. She said that the only example of action was that a meeting was organised where the girls were asked to apologise to each other and treat each other with respect. Ms C believed that this approach

was weak, that Pupil 1 was a dangerous individual, and that more should have been done. Ms C said the girls involved were never punished and that their parents were only informed after Ms C insisted that they should be.

14. Ms C referred to a specific incident which she said happened on 22 March 2004 and which involved Miss A being head-butted. Ms C said that Miss A and another pupil had reported this incident to a teacher but no action had been taken. Miss A then went to the police as she did not feel School 1 treated the incident seriously enough. Ms C said that police charges were brought against the perpetrator as a result. Ms C said that the incident had occurred in School 1 and there was, therefore, evidence that Miss A had been bullied in school. Ms C said that, rather than the bullying occurring outside school and spilling into school, the bullying had started with the incident where Miss A was head-butted at School 1.

15. Ms C added that the steps School 1 did take in relation to Miss A being bullied only occurred as a result of Ms C's persistence in ensuring the situation was addressed. Ms C maintained that School 1 and the Council failed to provide Miss A with an appropriate level of education in a safe learning environment.

#### *The Council's response to the complaint*

16. In addition to providing the evidence set out below at paragraphs 17 to 29, the Council said they considered that incidents of bullying were addressed immediately and that School 1 followed their Anti-Bullying Policy and procedures and had engaged in appropriate internal and external support. They said that, while not condoning the behaviour of bullies, it was clear that a number of incidents had occurred outwith school, related to the relationships between the girls, and involved allegation and counter-allegation. The Council's view was that episodes of bullying involving all the girls were clustered around specific time periods, were properly addressed and did not seem to impact on Miss A's behaviour, attitude or learning, which remained reasonably consistent throughout her schooling.

#### *Evidence*

17. The first recorded incident of bullying reported by Miss A was on 22 March 2004. This was recorded by School 1 on a handwritten sheet of paper on which was noted: Miss A's statement; a witness (Pupil 2) statement; a telephone record indicating that an Inclusion Manager of the Council (Officer 1)

was contacted; a brief note of a meeting between the mother of Pupil 1, the author of the note, and School 1's Rector. Miss A's statement noted:

'I was walking towards [a shop] from [another shop]'s direction, and [Pupil 2] + me stopped walking to consider where to go next. [Pupil 1] came towards me, saying 'Come, [Miss A] – Come here – I wanna talk to you. I'm not going to leather you, you little f\*\*\*\*\* b\*\*\*\*\*'. At that point, I walked into [a bookshop], [Pupil 1] came up to the door, but she walked away after seeing that I was talking to a lady behind the counter. [Pupil 2] was outside, waiting for me. Then she came inside with [illegible], we were there for about 20 mins, with [Pupil 1] stood waiting in [a shop] doorway.

Finally, a girl in the 5<sup>th</sup> yr at [School 1] ... came to the bookshop. She walked up to the corner of ... then she went back to school, and me and [Pupil 2] went to the police station. I told a male police officer (don't know his name) my name, address, [tele]phone number, and [Pupil 1's] name. He said he would contact me at a later date, after he had spoken to [Pupil 1].

Then, I came up to school with [Pupil 2], and talked to [Deputy Head Teacher].'

Pupil 2's statement said:

'After [Miss A] went into the [bookshop], [Pupil 1] grabbed my wrist and pulled me, as though she wanted to talk, but I just followed [Miss A] into the shop. We stayed there for roughly twenty minutes. [Pupil 1] stood in the doorway of [another shop] and watched us through the window.

A girl in 5<sup>th</sup> yr took us up to the corner of ... then went back to school, while we went to the police station. The officer took only [Miss A's] name, and told her that he'd speak to [Pupil 1], then get back in touch with her.'

The telephone note stated:

'Phoned Officer 1 – will try and set up a meeting 23-3-04.'

The note of the meeting with Pupil 1's mother stated:

'Saw [Pupil 1]'s mother later in the week with Rector. This issue among others was raised. [Pupil 1]'s mother was quite difficult – [Miss A] to let me know of further problems.'

I sought clarification from the Council on Ms C's statement that Miss A had been head-butted in School 1 on 22 March 2004. The Council told me that there is

no record of such an incident occurring in school. The contents of the evidence I have been provided with shows no record of such an incident.

18. The next recorded incident involved a verbal threat on Saturday 24 April 2004. I have seen a note, written by Officer 1, and dated 27 April 2004, which recorded Miss A's allegation that Pupil 1 had threatened to kill her.

19. The records show that a meeting was organised by Officer 1 on 14 May 2004 where Miss A, Pupil 1 and another girl involved in the incidents agreed to treat each other with more respect. A note of the meeting stated:

'Girls agreed to be respectful towards each other – grudging [and] to meet up again 26.5.'

I have seen evidence that these incidents were reported to the Children's Reporter who chose not to hold a hearing.

20. The records show that, on 19 August 2004, Miss A reported that Pupil 1 had thrown a plastic bottle at her. The Council's records indicate that a witness statement was taken in relation to the incident. This issue, amongst others, was the subject of meetings held between School 1, Pupil 1, her parents and external agencies. These issues subsequently led to Pupil 1 being excluded.

21. The school's records show that between 22 October 2004 and 26 October 2004, Miss A reported bullying relating to an incident that had occurred at the weekend. I have seen a handwritten note which recorded three conversations in which Miss A complained of bullying, this mentioned an Inclusion Worker of the Council (the Inclusion Worker); a record of a conversation between a teacher and the girls alleged to have bullied Miss A (Pupils 3, 4, 5, 6 and 7); and a written statement by Pupil 4. The record of Miss A's allegations stated:

'22.10.04 – complaining about [Pupil 3] and [Pupil 4] giving her a hard time and saying things to her and glaring at her etc. Wants to change reg [registration] classes.

[Miss A] to avoid [Pupil 3] as much as possible.

I will speak to [Pupil 3] and [Pupil 4] re the same.'

'26.10.04 – [Miss A] came to speak to me today. Gang of girls surrounded her at morning interval in crush hall. Threatening behaviour. Related to incident at weekend involving [Miss A], [Pupil 5], [Pupil 6].'



'26.10.04 Account of conversation which took place ... between [Miss A] and ... [the Inclusion Worker] ...

[Miss A] asked to speak to me whilst in the school office. She informed me that she was having problems with [Pupil 6] and [Pupil 7] due to an incident that happened at the weekend in town. [Miss A] alleged that [Pupil 6] and [Pupil 7] and their friends are harassing her in school and following her around. I suggested to [Miss A] that she write an account of what has happened today and gives it [to her Guidance Teacher] who is aware of the situation. [Miss A] refused to do this and said that she will do it tonight and give it [to] him tomorrow. I offered to escort [Miss A] back to class or to see [Guidance Teacher] but she refused my offer. I also advised her that if at the end of the school day she felt threatened in any way she could report to the school office so that she could be escorted onto the bus.'

A statement, apparently written by Pupil 4 stated:

'26/10/04 She [Miss A] hit [Pupil 6] 3 times on Saturday night. She made an obscene gesture at [Pupil 3] and [Pupil 2], yesterday afternoon.

[Miss A] kicked [Pupil 7], prior to this.

[Pupil 3] and I glared at her after this.'

The record of a conversation between a teacher and Pupil 3 and Pupil 4 stated:

'Spoke to [Pupil 3] and [Pupil 4]. They claim that [Miss A] is the one who annoys them.

[Pupil 3] and [Pupil 4] to avoid [Miss A].'

22. A letter from School 1 to Ms C dated 3 November 2004 provides a summary of the way School 1 dealt with Miss A's concerns. The letter stated:

'I understand [Miss A] had an issue during the week regarding an alleged incident at the bus park. She named a boy as having pushed her and also outlined a problem being caused by another girl. I have investigated this and the boy concerned was shocked and said if he had touched her it may have been as a result of being pushed by a large crowd but he was unaware of anything happening and there certainly wasn't any indication of intent on his part. The girl concerned stated that [Miss A] had assaulted her sister at the weekend and she merely wanted to know why but had not 'set' anyone upon her. It appears there may have been some 'weekend' issues brought into school.

As her parent this may be another area you would wish to discuss with her. My advice is, regarding assaults, to consider whether this should be a police matter or not. I have told both pupils concerned to stay clear and say nothing detrimental about [Miss A] to anyone else but to report any concerns to the school. I also gave [Miss A] the same advice and told her she can come with me to the bus park (which I regularly attend) if she has any concerns.

Prior to these incidents [Miss A] saw [Guidance Teacher] and said that other pupils in her registration class were giving her a hard time. She also said this is why she turns up late for registration on a regular basis. This was investigated by [Guidance Teacher] and myself. The girls concerned admitted 'glaring' at [Miss A] but also said that she was swearing and making obscene gestures to them as well as intimidating their friends, again, mainly out of school. Those girls were also warned off and all parties, including [Miss A], told to inform the appropriate staff if there were further concerns. The pupils who have been subject to allegations say that [Miss A] 'makes up' stories or makes out she is the victim when in most cases they believe her to be the perpetrator.

As a school we have taken all of [Miss A]'s concerns seriously and will continue to do so. In August [Miss A] was assaulted by another pupil which ultimately resulted in a lengthy exclusion for that individual. It is clear that on occasion [Miss A] has been maligned and this has been dealt with appropriately. It is also clear that [Miss A] attempts to avoid normal school procedures and has not always been willing to be completely truthful about incidents. With this background in mind, [Miss A] and I met with [Acting Rector] yet again on Friday 29 October to find a clear way forward. [Miss A] accepted that the school had dealt with her concerns fairly and had supported her.'

23. The next recorded incident of alleged bullying occurred on 27 January 2005. This incident involved a friend of Miss A's, referred to as Pupil 8. A note of the incident stated:

'[Ms C] [tele]phoned [the Inclusion Worker] regarding an incident on school bus yesterday. [Guidance Teacher] [tele]phoned [Ms C]. Claimed that, on the way home, some girls were picking on [Miss A] to such an extent that she had to get off the bus. [Guidance Teacher] spoke to [Miss A] who

claimed that there was nothing to worry about. Some girls wouldn't let [Miss A] sit at the back of the bus. [Miss A] said that she got off the bus as she wanted to meet her mother. There was no problem.'

Another note dated 1 February 2005 stated:

'[Miss A] alleged she was being verbally abused by [Pupil 1], [Pupil 6] and [another alleged bully (Pupil 9)]. [Ms C] arranged an appointment with [Headteacher, Deputy Headteacher and Rector] in school. After a difficult meeting, [the Rector] initiated an investigation and will get back in touch with [Ms C] to share the findings. [Miss A] alleged incidents occurred on Friday 28<sup>th</sup> Jan in school. Investigation revealed there had been an incident on Thurs 27<sup>th</sup> Jan at Sports Centre. Also counter allegations including verbal abuse by [Ms C] to [Pupil 6]. In addition, [another alleged bully (Pupil 10)] appears to have been involved ... ALL pupils were spoken to and advised with regard to correct procedure both in and out of school. Every person's view taken seriously and all admit to verbal abuse. (There is a history of [Miss A] making unfounded allegations, including against staff, but every case reported has been investigated.) ...

Report of [Pupil 6] statement - Name calling and general bad feeling has been going on for some time. Claims [Miss A] started it. Says stopped until [Ms C] said that [Pupil 6] should 'try the Atkins diet'. Claims she was also assaulted by [Pupil 5] and [Miss A] last year. [Pupil 10] also involved. Happy for this to stop and will heed advice and procedures detailed by [Headteacher and Deputy Headteacher]. I spoke to [Pupil 6]'s mother who is aware of the situation and will consider going to the police if [Ms C] continues to be involved. Generally satisfied with school procedures. I repeated advice given to [Pupil 6].

Report of [Pupil 9] statement - Has got caught up in feud between [Miss A] and [Pupil 6]. Wants things to be normal. Counter allegations regarding intimidation from [Miss A]. Also reiterated allegations about [Ms C]. Statements passed on to [Guidance Teacher] for information. Happy to take on board advice from [Headteacher and Deputy Headteacher] re procedures etc.

Report of [Pupil 8] statement - Caught up in feud between [Miss A] and [Pupil 6]. [Pupil 10] also involved. Involved in mutual name calling. Would like it to be stopped. Counter allegation. Latest incident at sports

centre, not school. Willing to comply with advice given by [Headteacher and Deputy Headteacher].'

A note dated 7 February 2005 stated:

'[Miss A] and her mother came in at [Headteacher]'s request to discuss investigation of allegations. Counter claims by other girls. All admit to name calling but say it was a two way thing. Girls say it was made worse by [Ms C] verbally abusing [Pupil 6]. [Ms C] denies this ever happened. [Headteacher] advised [Miss A] to report any name calling etc to [Deputy Headteacher or Guidance Teacher]. Also not to say anything to others or retaliate in any way. School Action Team Meeting arranged for Friday 11 Feb to further discuss support for [Miss A].

A note dated 9 February 2005 stated:

'More accusations of name calling etc by both girls. I got both of them together ... Re-emphasised that others are quite willing to stir things up. Previous advice reiterated. Asked girls if they would like this to stop. Both said yes. They have agreed not to say anything to or about the other person to friends and will keep clear of each other. Both girls to let me know if there are further problems.'

24. The next recorded incident of bullying was on 24 February 2005 when Miss A was allegedly pushed against a wall. This incident involved another friend of Miss A's, referred to as Pupil 11. I have seen a handwritten note which recorded a telephone call from Ms C; a record of a conversation with Miss A; and a record of a discussion with all the girls involved. The record of the conversation with Ms C stated:

'[Ms C] called  
[Pupil 6], [Pupil 7] and [another pupil (Pupil 12)] pushed [Miss A] against a wall in school yesterday. No more details.'

The record of the conversation with Miss A stated:

'Spoke to [Miss A].  
Pushed [Miss A] against wall in corridor at end of lunch. Witnessed by [Pupil 11].'

The record of the discussion with all the girls involved stated:

'I spoke to all girls involved in an effort to put an end to this.  
Referred to [Deputy Head Teacher].'

The Council also made an entry in an Incident and Action details form which stated:

'Telephone call from [Ms C]. [Miss A] was pushed into a wall by two other girls in S4. There is a long running feud between [Miss A] and [Pupil 7] which spills into school. Both girls clearly warned that such behaviour will not be tolerated. They both agreed that they will avoid each other as much as possible.'

25. On 28 February 2005, a School Action Team (SAT) meeting took place attended by staff from the Council and School 1 and by Ms C and Miss A. A minute of the meeting stated:

'Much discussion took place around the serious bullying issues. [Assistant Director Inclusion] tried to tease out the precise data of the where, when and who were involved in several incidents. [Headteacher] and [Depute Head Teacher Guidance] stated that they had investigated matters and interviewed all concerned at the times of the incidents. They continued to stress that a considerable amount of time had been spent in dealing with [Miss A]'s concerns. [Ms C] expressed frustration that bullying is still an ongoing matter.

The Council's Assistant Director (Inclusion) concluded that the school will speak to all the parents concerned. He assured [Ms C] that young people can be brought to task in a variety of different ways if found guilty of bullying. [Miss A] herself had an obligation not to be part of it, for example, not to call names in return.'

26. A note dated 1 March 2005 stated:

'Allegations at [SAT] meeting that [Miss A] was being bullied at school. [Guidance Teacher, Deputy Headteacher and Headteacher] outlined where specific issues had been addressed including allegations which were unfounded. Parents of [Pupil 6], [Pupil 7] and [Ms C] had all been involved and this is where the main tensions had been. [Deputy Headteacher] spoke to pupils and parents of [Pupil 6], [Pupil 7], [Pupil 9], [Pupil 10] and [Miss A]. Other girls stated that there had been no issues since [Deputy Headteacher] last spoke to them. [A friend (Pupil 13)] has recently become friendly with [Miss A] and feels she doesn't help situations but has seen little sign of bullying in school. Has tried to and will help advise [Miss A]. [Pupil 10]'s mother and other pupils' mothers to

reinforce advice from school and contact school if there are issues. All pupils advised to report any concerns to me or guidance teacher. [Headteacher] to liaise with [Ms C].'

27. As well as the contemporary records from School 1 which are set out above, a letter from the Support Worker dated 12 August 2005, who was acting as Miss A's advocate, provided a list of incidents of alleged bullying that the Support Worker was aware of:

- '23.03.04 [Miss A] received physical and verbal threats of violence in various public places, police charged [Pupil 1].
- 24.04.04 [A Saturday] [Miss A] was head butted by [Pupil 1] then chased down ... Main Street by 15 other young people. Police lifted and charged [Pupil 1].
- 05.05.04 Incident at school, [Pupil 1] swearing and calling [Miss A] names in school library.
- 05.06.04 [Pupil 1] shouting threats to [Miss A] in bus park.
- 07.06.04 [Pupil 1] threatened [Miss A] outside school office.
- 08.06.04 [Pupil 1] threatened to 'beat s\*\*\* out of' [Miss A] at bus park.
- 09.06.04 [Pupil 1] threatening to kill [Miss A] in [a café], staff asked [Miss A] to wait behind the counter until person had left premises.
- 11.06.04 [Pupil 1] attacked [Miss A] ... grabbing her by the hair and kicking her. Staff telephone police and [Pupil 1] take to police station ...
- 19.08.04 [Pupil 1] threw plastic bottle at [Miss A] in school and shouting threats, telling her she was going to 'give her a kicking'.
- 27.10.04 Another pupil verbally abusive to [Miss A] in the bus park and pushes her into the side of the bus, other pupils join in pushing and shoving [Miss A] ...

26.01.05 Two pupils kick [Miss A] on school bus, not allowing her to sit down on bus.'

Some of the incidents that are listed as occurring in school in this letter are not reflected in School 1's records (for example, incidents between 5 May 2004 and 11 June 2004). It is not clear whether these incidents were not reported to School 1, or whether they were reported, and not recorded.

28. Another significant piece of evidence is a record of information provided by the Support Worker in an interview on 15 June 2006, during the subsequent investigation of Ms C's complaint. The note of the interview stated:

'The Support Worker's role was to undertake initial assessments for the Children's Reporter relating to an incident involving the police when [Miss A] was under 16. There was a bullying incident in April 2004 and [Miss A] went to the police about verbal and physical threats of violence in various public places.

The bullying began in the school but there were also a few instances in the bus park near the school.

The Support Worker [tele]phoned [School 1] several times to put the case for [Miss A]. She acted as [Miss A]'s advocate and was satisfied with the way the school kept her informed of [Miss A]'s case. The Support Worker felt the main thing was to get [Miss A] to school and on occasions [Miss A] was escorted to classes and the bus. She considered the school had been very helpful and had done all it could but that this had lead [sic] to [Miss A]'s isolation. She acknowledged that the school also had to look at the rights of others (those doing the alleged bullying) and that they could not exclude them.

She felt that the key was to remove the bully from the system and she had pushed and pushed for the school to deal with [Pupil 1]. The school had tried to reduce the incidence of opportunistic contact by, for instance, providing supervision at break times. However, [Miss A] considered that [School 1] wasn't a safe place.'

29. I have also seen papers relating to disciplinary action taken against Pupil 1. They clearly show that the Council took a range of actions to address her behaviour including meetings with her parents and exclusions.

30. Ms C told me that she did not believe that Miss A had assaulted any other pupil as alleged in the letter of 3 November 2004 (see paragraph 22) and that at the SAT meeting referred to in paragraphs 25 and 26, the Assistant Director (Inclusion) had expressed alarm that Miss A had said she was a prisoner in her own home to the extent that she was seriously considering carrying a knife, although this is not mentioned in the minute of the meeting or the note of 1 March 2005.

*(a) Conclusion*

31. It is clear from the evidence I have considered that Miss A was bullied while a pupil at School 1. That fact is not in dispute and evidence shows that the Council and School 1 accept that serious bullying occurred. There is some disagreement between the Council and Ms C regarding where the bullying started, and whether it occurred mainly inside or outside of School 1. However, the important question in terms of this investigation is whether bullying within School 1 was dealt with appropriately once it was reported and whether School 1 followed the Anti-Bullying Guidelines and the Anti-Bullying Policy in dealing with any incidents.

32. Having considered all the evidence, I am satisfied that School 1 dealt with incidents within the parameters set out in the Anti-Bullying Guidelines and the Anti-Bullying Policy. I appreciate that Ms C feels that School 1 should have done more and that they did not go far enough in imposing sanctions against those accused of bullying.

33. However, I have seen evidence showing that School 1's approach to Pupil 1 was robust and that the sanctions which the Anti-Bullying Guidelines advised should be considered in such circumstances were considered and, indeed, employed on a number of occasions. These included meetings with Pupil 1 and her parents, the exclusion of Pupil 1 and the involvement of appropriate external agencies and individuals.

34. In relation to bullying perpetrated by other pupils, the evidence I have seen indicates that incidents were appropriately recorded by School 1, witness statements taken where necessary, meetings held with alleged bullies, and contact made with some of their parents. A key theme in the Anti-Bullying Guidelines is the pursuit of a 'no blame' approach to bullying where, if possible, matters are resolved through discussion with both the victim and the bullies. I



do appreciate that Ms C wanted School 1 to do more and that she feels that this approach was a weak one. However, School 1 were acting within the scope of the Anti-Bullying Guidelines and the Anti-Bullying Policy by attempting to resolve matters through discussion and by using methods such as making the girls involved apologise to each other.

35. In addition, I note that incidents of bullying were often not as clear cut as Ms C believes. Several incidents involved counter-allegations by girls accused and, on that basis, it would have been difficult for School 1 to take more robust action against any party when the evidence was inconclusive and versions of events differed significantly. Ultimately, deciding the appropriate response to many of the incidents was a matter of professional judgement for School 1's staff and I am satisfied that their judgement was exercised within the boundaries established by the Anti-Bullying Guidelines and the Anti-Bullying Policy. Certainly, I have seen no evidence of maladministration that would lead me to question the decisions reached by School 1's staff in dealing with this case.

36. In my view, therefore, School 1 acted reasonably in the way they went about investigating Miss A's allegations of bullying and in the action they took as a result of those investigations. Robust sanctions were taken where the evidence supported this. Other methods of resolving matters, including the sort of discussion and reconciliation strategies recommended by the Anti-Bullying Guidelines and the Anti-Bullying Policy, were pursued in other instances. In several instances, where what happened was in dispute, and there was allegation and counter-allegation, School 1 set out the behaviour expected of all parties, including Ms C and other parents. In summary, in all the instances above, I have seen no indication that School 1 acted outwith the Anti-Bullying Guidelines and the Anti-Bullying Policy or that the professional judgement of their staff was exercised inappropriately within those parameters. Accordingly, I do not uphold the complaint.

**(b) The Council failed to provide Miss A with educational services by unreasonably refusing a transport request to allow her to attend School 2**

37. Annex 4 provides relevant extracts from the Council's Home to School Travel Policy (the Travel Policy), the Scottish Executive's<sup>1</sup> 'Choosing a School – A Guide for Parents' (the School Guide) and the Education (Scotland) Act 1980 (the Act).

*Ms C's complaint*

38. Ms C said she had requested a transfer for Miss A to School 2 in April 2005 as Miss A did not feel she could continue to attend School 1 due to her being bullied. She said that School 2 and School 1 were equidistant from her home and that transfer to School 2 was the only option that would allow Miss A to remain on the island and continue her schooling.

39. Ms C said the Council accepted the transfer request on 8 June 2005, but told her that she would have to cover transport costs herself. Ms C said the School was 19 miles away and that, while public transport was available for the return journey, the earliest Miss A could get there by public transport in the morning was 11:00. She said this meant that a taxi would be required every morning at a cost of £30. She explained that she was unable to meet this cost and appealed against the Council's decision not to pay for the transport, arguing that Miss A would be unable to finish her education and attain her Higher qualifications if she did not attend School 2.

40. Ms C said her appeal of the decision not to pay for Miss A's transport to School 2 was on the basis that the planned move to School 2 was not a matter of parental choice, but was due to the serious bullying Miss A was subject to, which meant there was no option but for her to change schools. Ms C said the case was not comparable to a situation where parents decided they wanted their children to attend a school outside of their catchment area simply because they preferred that school. She said that in this case, Miss A's education, health and wellbeing were at stake. Ms C said she was of the genuine and, she felt, reasonable belief that there was no alternative but for Miss A to stop attending School 1 and attend School 2.

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<sup>1</sup> On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

41. Ms C said, in addition, that there was an easy and cost-effective solution to Miss A's transport needs as another girl was provided a taxi by the Council in order to attend School 2 and this taxi passed Ms C's home every morning. She said Miss A and the girl were good friends and the girl's parents had no objection to the taxi being shared. Ms C said that, given the circumstances, and given that transport could be provided at no extra cost to the Council, the transport request was reasonable. She said she had also offered to contribute all her tax credits towards the cost of transport, but that she was told this was not an option.

42. Ms C pointed out that the report submitted by the Council to the appeal hearing stated that the girl whose taxi Ms C proposed be shared by Miss A was being provided as 'dedicated special needs provision' and, therefore, could not be shared. She said that no reason was given as to why the taxi could not be shared. Ms C felt the decision to reject her appeal was wholly unreasonable especially given that transport could have been provided at no further cost to the Council.

43. Ms C said she felt the Council were biased against her and had failed to take Miss A's situation seriously. She said she felt the delay in hearing her appeal and the decision to reject it were a manifestation of the Council's attitude towards her. She said she was seen as an outsider, who was causing trouble and had attracted unfavourable reports in the press. She believed the Council did not want to do anything that might validate Ms C's position and they had, therefore, decided to reject her appeal before it was heard.

44. Ms C said she believed the Council had not given her concerns full consideration when determining the appeal. She also said that not all relevant evidence was taken into account, in particular, the serious detrimental impact that bullying at School 1 had, and the lack of availability of a cost-effective alternative solution.

45. Ms C said that, even if School 1 had taken all appropriate steps to protect Miss A from bullying (which she disputed), it was understandable that Miss A would not want to return there given there was a genuine threat of further bullying and violence. Ms C believed that given the severity of the situation the Council should have taken steps to ensure that Miss A could have continued with her education.

*The Council's response to the complaint*

46. The Council said that Ms C made a placing request for Miss A to attend School 2 and that this request was approved. They said, however, that in line with national legislation and the Travel Policy, there was no obligation on the Council to provide free home to school transport and, therefore, this was not provided.

47. The Council submitted a copy of a letter they had sent Ms C on 8 June 2005, which referred to their decision:

'I refer to your letter and write to confirm acceptance of your request that your daughter [Miss A] be enrolled in [School 2].

You should now approach [School 2] with a view to enrolment.

The Council is not required to provide transport for placing request pupils who are attending a school other than the nominated area school and, accordingly, parents will require to make their own transport arrangements or can utilise public transport services on payment of a bus fare.

In a very small number of cases it may be possible to offer pupils transport without payment where there is a dedicated school contract vehicle with spare capacity serving the placement school.'

48. The Council said that, apart from one taxi on hire to the Council, there was no transport (such as education or public service buses) travelling to School 2 at a time that would have enabled Miss A to arrive there on time in the morning.

49. Internal documents and information provided by the Council show that consideration was given to the request that Miss A share the taxi but that, in the Council's view, this would not have been appropriate given the taxi was being provided under special educational needs provision.

50. The Council said that Ms C then applied for 'privileged' free home to school transport for Miss A under Section 51(2) of the Act. They said this request was refused because it was considered that allowing Miss A to travel with the pupil who was being transported in the taxi would have a seriously detrimental effect on that pupil. The Council said it was their opinion that the needs of the other pupil could not be met if Ms C's transport request had been approved. They said that, following the verbal receipt of professional advice

endorsed by the Council's Head of Service for Inclusion and Early Education, they decided that the needs of the other pupil had priority. I have discussed the details of the advice with the Council, they advised me that the advice stated that it would be detrimental to the other pupil to share the taxi, and I am satisfied that this advice was received and properly considered by the Council.

51. Ms C's appeal against the refusal of the transport request was considered by the Council's Appeals Sub-Committee (the Committee). The Report submitted by the Council to the Committee stated:

'[Miss A]'s catchment school area is [School 1]. In June 2005, the Education Department approved [Ms C]'s request that [Miss A] attend [School 2] but noted the Council was not obliged to fund transport for any pupil placed in a non-catchment area school as a result of a placing request.

[Ms C] originally asked that [Miss A] share transport with another pupil travelling to ... but was advised that this was dedicated special needs provision. She then appealed against the decision not to award school transport on the grounds that [Miss A] was being bullied at [School 1] and that it was not an option for her to return there.

[School 1] and the Education Inclusion Manager have stated that since May 2004, extensive support has been provided to [Miss A], and that her issues have been appropriately addressed by the school. The Education Department's recommendation is that [Miss A] return to [School 1] for her fifth year and that the advice and supports at [School 1] be accessed by [Miss A] to resolve issues.

In the event of the Service Appeals Panel allowing the appeal, dedicated transport for [Miss A] would require to be arranged as there is no public or education service available.'

52. A report prepared by Officer 1 and submitted to the Committee made the following recommendation:

'I am confident that [School 1] have appropriately addressed the issues raised in relation to [Miss A] being bullied and will continue to do so. I would therefore suggest that it is appropriate for [Miss A] to return to [School 1] if she wishes to return to school for her fifth year, and that the

advice and supports available there be accessed by [Miss A] to resolve issues.'

53. The Council said a hearing was held in August 2005 and that the appeal was not upheld.

*Ms C's comments on the Council's Response*

54. In commenting on the Council's response, Ms C said that she was simply told that her transport request was being refused and was not given an explanation regarding the fact that they had taken professional advice or that Miss A sharing a taxi would be detrimental to the other girl. Ms C said that this resulted in her feeling frustrated and feeling that her request had not been considered properly.

55. Ms C said that the Council's internal communications implied that they had decided at the outset that they would not agree the transport request because they considered it a matter of parental choice and did not take into account the exceptional circumstances which forced Ms C to make the request.

56. Ms C said that she could not understand how Miss A sharing a taxi with the other girl could be detrimental, as they often spent time together.

*(b) Conclusion*

57. I note that the Council were under no obligation to provide Miss A with free school transport to School 2. As the School Guide makes clear, the duty to provide free transport only applies in relation to travel to the school suggested by the Council, in this case, School 1. If another school is selected, the Council 'may be willing to help with transport, although they do not have to by law'.

58. The Travel Policy states that, in exceptional circumstances, the Council can consider requests for free school transport from people who are not legally entitled to it. It states that on such occasions a decision to provide free home transport has to be evidence-based and made on the grounds that not to provide transport would be seriously detrimental to the education of a pupil.

59. The Act makes clear that the duty of the Authority (in this case the Council) to offer vacant places in vehicles used to take pupils to school is not universal, but applies only to pupils 'to be selected by the Authority'. In line with

this, the decision of the Council whether or not to offer vacant places to any particular pupil, is a discretionary one.

60. While there was no obligation on the Council to provide free school transport, it is clear that they gave consideration to Ms C's view that Miss A was unable to return to School 1 because of the bullying she suffered there. It was their judgement, however, that it was safe for Miss A to continue her education at School 1.

61. With regard to Miss A sharing a taxi with the other pupil, the Council stated that that transport arrangement was in place due to the Special Educational Needs of the pupil in question. The Council considered Ms C's suggestion that Miss A share the taxi and also had a duty to consider the other pupil's Special Educational Needs and to ensure that these were met. Given the advice they received, the Council's view was that it would be detrimental to the other pupil to share a taxi with Miss A and they would, therefore, be failing in their statutory duty to the other pupil if they were to agree to Ms C's suggestion. In these circumstances, their decision not to offer Miss A any vacant places in the taxi and, therefore, to decline Ms C's transport request, seems reasonable.

62. I also note that, while the Travel Policy allows the Council to provide transport even when pupils are not entitled to it, this is a discretionary matter for the Council and it is up to them to decide whether it would be appropriate. Given that the Council did not share Ms C's view that Miss A would be unable to return to School 1 safely they would have felt there were no grounds to exercise their discretion.

63. Given all of the above, I do not uphold the complaint.

**(c) The Council failed to deal adequately with Ms C's complaints by constantly delaying the complaints procedure and failing to give adequate reasons for their decisions**

*Ms C's complaint*

64. Ms C said she was very dissatisfied with the way the Council dealt with her complaint and did not feel they had given it due consideration. She said that while they had gone through the motions of responding to letters and holding appeals, there was no genuine desire, on their part, to achieve a satisfactory resolution.

65. Ms C said that, given the seriousness of the situation for her and her family, the behaviour of the Council was unacceptable and the situation could have been resolved had they adopted a different attitude.

66. Ms C said that in September 2005, she complained to the Council about their failure to protect Miss A from bullying and their decision to refuse her transport request. Ms C also complained about the conduct of Officer 1 whom she alleged made an intimidating call to Miss A. Ms C believed there were several unacceptable delays in the way that her complaint was progressed by the Council.

67. As well as the alleged delay in the handling of her complaint, Ms C was concerned that she had not been given long enough to provide information to the Complaints Panel (the Panel). She said the Council arranged for the appeal to be heard on 20 April 2007 and notified Ms C of this (via the Citizens Advice Bureau (CAB) who were helping Ms C with the complaint) and told her that, should she wish to supply further evidence, she should do so. However, this was related in an email which was not logged by the CAB until 17 April 2007 owing to a public holiday. Ms C said that this did not allow any time for her to make a considered response. She also said that the Council had promised to send an agenda for the hearing, but that this was not sent.

68. One of Ms C's central concerns was that she was not given reasons for the decisions taken on her complaint. She said that she received notification of the outcome of her appeal on 25 April 2007 in a letter which simply stated that the complaint was not upheld on the basis that the submissions made by the Council's representative were accepted. Ms C said she was never sent a copy of the submissions and, therefore, no reasons were given. She said this was an inadequate response to her complaint. Ms C was also concerned that an internal report on her complaint prepared by a Council officer (Officer 4) for the Chief Executive was not sent to her. She said the fact that she was not given reasons for the Council's decisions made it very hard to challenge them.

69. Ms C said that while the Council appeared to have thoroughly investigated her complaint, they had done so in a way that gave no consideration to the stress and anxiety which the situation had caused her and her family. She said that letters from the Council, while polite, made no acknowledgment of the difficult situation she was in and of the fact that there was clear evidence that her daughter had been bullied through no fault of her own.



### *The Council's response*

70. The Council said they responded to Ms C's complaints promptly and in an appropriate manner. They acknowledged there was a delay in hearing Ms C's complaint at the second stage of their complaints procedure. They said that Ms C, after receiving a letter in November 2005, made a Freedom of Information request. They said this was processed in line with statutory timescales. The timescale for lodging an appeal had elapsed but that they had nonetheless decided that Ms C should be allowed to lodge an appeal. The appeal was then decided within a normal timescale.

71. The Council told me that they had enclosed the agenda for the appeal with a letter of 13 April 2007 to the CAB, who were representing Ms C in dealings with the Council. The Council told me that, as well as the single page agenda, this enclosure included the Council's submissions to the Panel.

72. The Council said that reasons were given to Ms C for their decisions and that the letter relating to her final appeal referred to the Council's detailed written submission as the grounds for the determination.

### *The Council's complaints procedure*

73. Paragraphs 74 to 76 summarise the Council's complaints procedure.

74. A complaint will be acknowledged within three working days and a senior manager will investigate the complaint in confidence. A response will be provided within 21 calendar days from the date a complaint is received and if a response cannot be given within that time, complainants will be informed of the delay.

75. If a complainant is not happy with the Council's initial response, a complaint can be made to the Chief Executive within 28 days of receiving the decision. The Chief Executive will acknowledge the complaint within three working days, examine all the papers on the case and investigate the complaint. A meeting with the Chief Executive or another senior officer will occur within 14 days of a complaint being received or as soon as practicably possible. A response will be provided as soon as possible and if that exceeds 21 working days, the Chief Executive will write to explain the reason for any delay and indicate when the response is likely.

76. If a complainant is unhappy with the Chief Executive's response, there may, depending upon the circumstances of the case, be a right of appeal to a review committee composed of councillors, and the Chief Executive will provide details regarding this. As noted in paragraph 88 below, the Chief Executive advised Ms C that she had this right.

*Complaint correspondence*

77. On 15 September 2005, Ms C submitted a formal complaint to the Council, alleging that they had failed to provide a safe educational environment for Miss A and that Officer 1 had behaved inappropriately. On 19 September 2005, the Council wrote to Ms C acknowledging receipt of the complaint.

78. On 22 September 2005, a Council officer (Officer 2) wrote to Ms C inviting her to a meeting to discuss the complaint. On 27 September 2005, Ms C wrote to the Council's Director of Education saying that she wished for a different Council officer to investigate her complaint as she said Officer 2 had involvement in the matters she complained of.

79. On 13 October 2005, the Council wrote to Ms C stating that they would give the investigation of the complaint to another officer (Officer 3) and that she would contact Ms C when she returned from leave.

80. On 27 October 2005, Officer 3 wrote to Ms C inviting her to attend a meeting to discuss the complaint. A detailed note of the meeting, held on 1 November 2005, provided an account of Ms C's grievances and showed that Officer 3 asked a number of questions to establish the basis of the complaint.

81. The Council provided me with notes of the investigation carried out by Officer 3 which showed that five members of School 1's staff were interviewed regarding the complaint and an interview was also held with Officer 1. Officer 3's report on the complaint was detailed and demonstrated a genuine effort to establish the facts of the case.

82. Officer 3 wrote to Ms C on 16 November 2005 and provided a summary of the findings of her investigation. The letter explained that the evidence considered in the course of the investigation did not support Ms C's complaint and clearly explained why her complaint was not being upheld.

83. On 29 November 2005, Ms C requested information from the Council and this request was dealt with under the Data Protection Act. A response was provided by the Council on 9 January 2006.

84. I asked the Council for evidence of when Ms C's request for information was received by the Council. They told me that it could not be definitively determined when the letter was received by the Council, but that it was received before 7 December 2005, as an acknowledgement letter was sent to Ms C on that day.

85. On 8 January 2006, Ms C wrote to the Council stating that she was unhappy with Officer 3's response and wished to pursue the matter further. The Council initially refused to consider the complaint because Ms C had not responded within the required timescale. Ms C challenged this decision in a letter dated 7 February 2006, in which she explained that she did not complain within the timescale because she was awaiting information to be supplied under the Data Protection Act. On 15 February 2006, the Council agreed to re-examine the complaint and said that Officer 4 would contact her shortly.

86. On 22 February 2006, Officer 4 met with Ms C and her grievances were again recorded. Ms C was allowed to revise the minute of this meeting and Officer 4's draft minute was supplied to her electronically on 16 March 2006.

87. During the course of the investigation, Officer 4 obtained statements from, or interviewed, a number of the people involved in the complaint, including Officer 1, the Support Worker and several members of School 1's staff.

88. On 20 July 2006, the Council's Chief Executive wrote to Ms C to tell her that the complaint had not been upheld and he advised her of her right of appeal to the Panel consisting of elected members. The contact details for the Panel were provided in the letter.

89. I asked the Council if they could provide an explanation for why the investigation and reporting on Ms C's complaint had taken far longer than the 21 days outlined in their complaints process, and whether Ms C was advised that this delay was likely to occur, or the reasons for it. Following my enquiry to the Council on this point, they advised that it was not clear why the investigation and reporting on Ms C's complaint had taken far longer than the expected 21 days and could not state conclusively from their evidence in their records

that Ms C had been informed of the likely delay, or the reasons for it. When pressed for details of this delay the Council also stated that Ms C's complaint had been complex and involved a number of individuals across a number of departments and institutions. These included members of staff at School 1 whose work patterns were affected by term dates. The Council also told me that at some points during the investigation, responses were awaited from Ms C and others.

90. On 25 July 2006, Ms C wrote to the Council stating that she intended to take her complaint to the Ombudsman. On 27 July 2006, Officer 4 wrote to Ms C stating that if she remained unhappy she could write to the Panel.

91. On 10 October 2006, Ms C wrote to the Council's Chief Executive stating that she was unhappy with his decision and that she wished a review of the complaint by the Panel.

92. On 15 December 2006, the Council wrote to Ms C in response to her request that her complaint be considered by the Panel, and inviting her to submit a written statement of her case.

93. On 1 February 2007, Ms C wrote to the Council outlining her case. By this time, Ms C was receiving advice on her complaint from the CAB. On 9 February 2007, the Council wrote to the CAB advising that they were currently considering possible dates for the Panel to meet and requesting copies of documents referred to in Ms C's statement of complaint. On 19 February 2007, the CAB sent the documents to the Council. On 5 March 2007, the Council wrote to the CAB stating that the wrong documents had been sent and requesting the correct ones.

94. On 21 March 2007, the Council wrote to the CAB stating that the Panel would be convened shortly and asking whether Ms C wished to be present or for the appeal to proceed on the basis of written evidence. On 27 March 2007, the CAB wrote to the Council stating that Ms C preferred to proceed on the basis of written evidence.

95. On 13 April 2007, the Council emailed a letter to CAB stating that the Panel would hear the appeal on 20 April 2007 and asking that they forward any further evidence Ms C wished to be considered. The letter stated that a copy of the agenda and the procedure to be adopted by the Panel were enclosed with

the letter. A further email to the CAB on the same day asked that any information be sent to the Council by email and gave a contact number if there were any issues that Ms C wished to discuss regarding the arrangements.

96. The Panel heard Ms C's appeal on 20 April 2007. The Panel agreed that the appeal should not be upheld on the basis that they accepted the Council's submissions.

97. On 25 April 2007, the Council wrote to the CAB advising them of the Panel's decision and stating that the Panel had accepted the Council's submissions.

98. I asked the Council whether there was a written procedure for the Panel element of their Complaints and Appeals procedure. They told me that there was not.

*(c) Conclusion*

99. I consider that there were instances where the Council failed to follow their Complaints and Appeals procedure. For example, I have seen no evidence that Ms C's letter of complaint to the Council dated 10 October 2006 received an acknowledgement within three working days. A response was eventually sent on 15 December 2006, over two months later.

100. A further failure in this case occurred with regard to the way the second stage of the Council's complaints procedure progressed. Following her meeting with Officer 4 on 22 February 2006 there is no evidence that Ms C was contacted with an explanation regarding why it had taken more than 21 calendar days to complete the investigation. It is reasonable that, given the passage of time, the precise reasons for this delay may no longer be clear to the Council, and it is also reasonable, in the circumstances, that the investigation of Ms C's complaint would have taken the length of time that it did. However, it is clear that Ms C should have been formally advised of this delay and provided with an explanation for it at the time, and that a record of this should have been kept by the Council.

101. With regard to Ms C's concern about there being a delay in her request for information being processed, this is properly a matter for the Information Commissioner's Office which deals with complaints that the Data Protection Act

has not been adhered to. My understanding is that bodies have 40 calendar days within which to provide personal information.

102. With regard to Ms C's complaint about not being provided information about the appeal hearing in good time, the Council told me that their submission to the Panel was supplied to Ms C on 13 April 2007. Ms C's concern was that this did not give her time to respond to the Council's submission. Notwithstanding Ms C's statement that the Council's submission was not enclosed with the notification of the date the Panel would consider her appeal, I do not consider that the Council were obliged to give Ms C a right of response to their submission, or that the Panel would be obliged to consider it given that Ms C had already provided her statement of the grounds for her appeal. Given that, I cannot conclude that there was any maladministration in the length of time between the Council's submission being sent to Ms C and the Panel considering her appeal. However, I am concerned about the lack of written procedures for the Panel element of the Council's Complaints and Appeals procedure, and I deal with this in paragraph 106.

103. With regard to Ms C not being provided with reasons why the Council did not uphold her complaints, I am satisfied that the letters Ms C received following the investigations conducted by Officer 3 and Officer 4 provided adequate explanations of the evidence considered and the reasons for the findings that had been reached in those cases.

104. With regard to the Council's final decision, provided following the Panel hearing, it is clear that if Ms C had been sent a copy of the Council's submissions, she would have been given a detailed explanation of the basis on which the decision was taken. However, Ms C denies having received this document (see above). The Council state that a copy of the Council submissions were provided to the CAB as Ms C's representatives. There is clearly disagreement between Ms C and the Council over whether or not the agenda papers were sent along with the agenda to the CAB by email on 13 April 2007. However, the evidence provided by both sides is not sufficient for me to reach a firm conclusion on this point. Nonetheless, it would be consistent with good practice for the Council to state explicitly in letters enclosing 'agendas' what specific documents, beyond the outline of matters to be discussed or considered, should be enclosed.

105. While I have identified a number of minor procedural errors in the handling of Ms C's complaints, and made general recommendations to the Council as a result, I can find no evidence that the delays to the complaints procedure were in any significant way created or prolonged by the actions of the Council. As noted in paragraphs 102 and 104 above, I cannot reach a finding on whether or not the Council's submission was included with the Council's letter of 13 April 2007 to the CAB, but it is clear that it was intended to be and, in light of this and the information contained in the responses of Officer 3 and Officer 4 at the conclusions of the investigations that they made, I consider that the Council did supply Ms C with adequate reasons for their decisions. Given all of the above, I do not uphold the complaint.

#### *General Recommendations*

106. The Ombudsman recommends that the Council:

- (i) implement a system to ensure that the receipt of all letters to the Council are logged on the day they are delivered;
- (ii) apologise to Ms C for the failure to acknowledge her letter of 10 October 2006 within three working days;
- (iii) review their complaints procedure to ensure that complainants are provided with a formal explanation if the response to a complaint will take longer than the stated timescales;
- (iv) devise and implement a written procedure for the appeals panel element of the Complaints and Appeals procedure; and
- (v) review their communication policies and procedures to ensure that it is clear to recipients what documents should be enclosed with letters from the Council.

107. 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.

**Explanation of abbreviations used**

Ms C	The complainant; Miss A's mother
Miss A	Ms C's daughter
The Council	Comhairle nan Eilean Siar
School 1	The school Miss A attended
School 2	The school Miss A wanted to transfer to but was refused transport costs
The Anti-Bullying Guidelines	The Council's Anti-Bullying Policy Guidelines
The Anti-Bullying Policy	School 1's Anti-Bullying Policy
Pupil 1	A girl alleged to have bullied Miss A
GP	Miss A's general practitioner
Pupil 2	A girl who witnessed the incident of 22 March 2004
Officer 1	The Council's Inclusion Manager
The Support Worker	A Charity Support Worker
The Inclusion Worker	An Inclusion Worker of the Council
Pupil 3	A girl alleged to have bullied Miss A
Pupil 4	A girl alleged to have bullied Miss A



Pupil 5	A girl alleged to have bullied Miss A
Pupil 6	A girl alleged to have bullied Miss A
Pupil 7	A girl alleged to have bullied Miss A
Pupil 8	A girl who witnessed the incident of 27 January 2005
Pupil 9	A girl alleged to have bullied Miss A
Pupil 10	A girl alleged to have bullied Miss A
Pupil 11	A girl who witnessed the incident of 24 February 2005
Pupil 12	A girl alleged to have bullied Miss A
SAT	School 1's School Action Team
Pupil 13	A friend of Miss A
The Travel Policy	The Council's Home to School Travel Policy
The School Guide	'Choosing A School – A Guide For Parents' – a publication of the Scottish Executive
The Act	The Education (Scotland) Act 1980
The Committee	The Council's Appeals Sub-Committee
The Panel	The Council's Complaints and Appeals Panel that heard Ms C's appeal
CAB	Citizen's Advice Bureau

Officer 4	The Council's Officer given responsibility for investigating Ms C's complaint on behalf of the Chief Executive
Officer 2	The Council Officer initially given responsibility for investigating Ms C's complaint
Officer 3	The Council Officer subsequently given responsibility for investigating Ms C's complaint

**List of legislation and policies considered**

The Council's Anti-Bullying Policy

School 1's Anti-Bullying Policy

The Council's Home to School Travel Policy

The Education (Scotland) Act 1980

**Extracts from the Council's Anti-Bullying Guidelines and School 1's Anti-Bullying Policy:**

The Anti-Bullying Guidelines state:

'Possible alert signals to look out for which can sometimes suggest bullying is taking place include:

- Poor attendance, truancy.
- Spending a particular day at home sick.
- Turning up late for class.
- Loss of pens, books, jotters, school bags, clothes, dinner money.
- Unexplained bruises, scratches, torn clothes.
- Child becoming withdrawn, anxious/nervous.
- Mood swings.
- Tantrums or loss of control when bullied.
- Fear of travelling to or from school, either on foot or by bus.
- Fear of being around the school at break times and lunch times.
- Underachievement, deterioration in work progressively or suddenly.
- Defacing work.

This list is not exhaustive, and it must be recognised that these signs may be indicative of problems other than bullying ...

**ADVICE AND GUIDANCE FOR TEACHERS AND ADULTS WORKING IN/WITH THE SCHOOL ...**

Teaching Staff:

No exact formula can be given as it depends on the incident and how the teacher becomes aware of it. However, the following general points should apply in most instances:

- Remain sensitised to early signs of distress, and high risk periods when bullying may be more likely to occur ...
- Be accessible to pupils if they wish to discuss problems.
- Respond to reports of bullying in a sensitive manner by listening carefully and making written notes of information received.
- Offering practical support and exercising professional judgement on immediate responses to situations.
- Alerting the Headteacher to whom all known instances of bullying should be referred.

Headteacher ( DHT ) or Designated Member of Staff Should:

- Regularly highlight the school bullying procedures.
- Establish the facts of each case.
- Ensure the appropriate disciplinary sanction is used as per the school's discipline policy.
- Record incidents in an appropriate manner.
- Follow up and monitor incidents.
- Contact and keep all parties informed of developments (as appropriate to circumstances) for example – parents, teachers, guidance teachers, Senior Management Team, Social Work Department, Psychological Services, Reporter, Police.

#### ACTION TO BE TAKEN IN DEALING WITH NEGATIVE BEHAVIOUR

Procedure.

The process is objective and the NO BLAME approach is adopted where the school aims to correct bullying behaviour by working with the bullies and victims. Staff should explain clearly to all parties what is happening. Thereafter, staff should endeavour to monitor and support both the bully and the victim:

- Victim is interviewed.
- Witnesses are interviewed.
- Bully/Bullies are interviewed.

1. Problem is explained as fact, not accusation.
2. The bully's responsibility to change is stressed.
3. The bully is asked for solutions/suggestions.
4. A review meeting is arranged for the following week.

- A review meeting is held with the bully.

This process will be initiated as quickly as possible to resolve the problem speedily, and reduce the anxiety of all parties concerned.

Where possible, staff will aim to effect reconciliation between those involved. This has been shown to be an enduring solution in such situations. In doing this, all parties will be encouraged to see the matter from each other's perspective. Help and advice will be given to all

concerned. Incidents of a less serious nature can be addressed using circle time activities or discussed in class as a topic without naming anyone to find out how the pupils think the problem can be solved.

If the bullying is significant or continues, then the following sanctions may be imposed. The nature/seriousness of the bullying will determine which sanctions will be employed. The school prides itself in being firm, but fair regarding sanctions.

#### SANCTIONS/DISCIPLINARY MEASURES

- DETENTION - Pupil is supervised during breaks and given work to complete. This should involve reflection on the bully's own behaviour, and consequences rather than on lines or copying. If behaviour does not improve the Headteacher will take the next step.
- INFORM PARENTS – parents are informed in writing or by telephone.
- MEETING WITH PARENTS – If bullying persists, parents are invited to the school to discuss future action.
- INVOLVING OUTSIDE AGENCIES - This is an extremely serious step, and further action may be considered necessary, such as involvement of Behavioural Support Teacher, Psychological Services, Social Work Department and/or Police.
- TEMPORARY EXCLUSION– Pupil is excluded for a set period.
- PERMANENT EXCLUSION – Pupil is permanently excluded from school.

Loss of privileges, behaviour monitoring via the drawing up of school contracts or behaviour timetables may be used with pupils who have been bullying or suspected of this. This procedure can enable schools to monitor behaviour in class, and can also enable parents to keep in touch and make comments too. It should be used as a means of encouraging good behaviour and rewards can be built into the process.'

School 1's Anti-Bullying Policy states:

'Staff should

- Be vigilant at all times so as to detect any case of bullying in the school.
- Listen carefully to any complaints and report them to the appropriate Depute Rector.

Guidance staff should

- Establish links with pupils that would encourage them to share concerns about bullying.
- Counsel both the bullies and their victims. Bullies may not always realise the extent of the misery they are causing, or may justify it on the grounds that their victim 'deserves it'. Victims need to recover a sense of self-esteem.
- Be discreet at all times.
- Pay particular attention to those most commonly victimised – the new pupil, the pupil with a different accent, the pupil who overreacts, etc.
- Inform the appropriate Depute Rector and record any incident.

Depute rectors should

- Investigate discreetly and thoroughly all incidents of bullying referred to them, paying particular attention to the root causes.
- Record, follow-up and monitor incidents.
- Liaise, where appropriate, with Guidance staff, parents and outside agencies ...

#### PRACTICE IN RELATION TO BULLYING ...

- Incidents of anti-social behaviour come to light from time to time. These are dealt with by the appropriate Depute Rector with assistance and involvement of other staff.
- Relations between victims and perpetrators are clarified and lines of conduct for the future are laid down.
- Parents are included in the processes of resolution of situations in which distress has been caused by bullying behaviour.'

**Extracts from the Council's Travel Policy, the School Guide and the Act**

The Travel Policy states:

**4. PLACING REQUESTS**

4.1 Parents sending their children to a school other than the normal catchment area school (as a result of a placing request) shall fund the transport where necessary including paying a fare on any relevant public service.

**5. PROVISION OF NON ENTITLED TRANSPORT ON EDUCATION SERVICES**

5.1 Where free home to school transport is not provided, pupils may take advantage of spare capacity which exists on any relevant dedicated education service but may be required to pay the relevant fare for use of the service ...

**10. PROVISION OF FREE HOME TO SCHOOL TRANSPORT IN OTHER EXCEPTIONAL CIRCUMSTANCES**

10.1 Where there are, exceptionally, other circumstances in which free home to school transport is requested for a pupil travelling to a particular school who would otherwise be non-entitled, the matter will be referred to the relevant Head of Service. Any decision to provide free home to school transport will be evidence based and upon the grounds that to not do so would impact adversely and seriously on the education of the pupil ...

**14. APPEALS AGAINST NON-PROVISION OF FREE HOME TO SCHOOL TRANSPORT**

14.1 Parents may appeal against all decisions not to award free home to school transport to pupils or to provide transport which the parents or pupils believe to be unsuitable in the circumstances of their case.

14.2 All such appeals will be to the Service Appeals Panel of [the Council's] Audit and Scrutiny Committee.

14.3 All appeals will normally be heard by the Service Appeals Panel within 28 days of the appeal being lodged or of relevant information being obtained from the appellant if later.



14.4 The parents (and/or their representatives – or exceptionally pupils) will be invited to attend the Service Appeals Panel if they wish to present their case in person. The Service Appeals Panel will also seek the views of officers of [the Council] and may seek the views of any other party whose evidence would be material to the appeal ...'

The School Guide states:

'Travelling to school

If the Council has suggested a school for your child, the Council must make arrangements to get them there IF:

- he or she is under 8 years of age and lives more than 3.2 kilometres (2 miles) from school; or
- he or she is 8 years of age or over and lives more than 4.9 kilometres (3 miles) from school.

If you decide that you do not want your child to go to the school suggested by the Council and instead ask that he or she goes to another school, the Council does not have to provide a school bus or any help with transport.

The Council may be willing to help with transport although they do not have to by law. It may be worth asking if you would get any help before you decide to ask for a place in the school you prefer.

If the Council decided not to help with transport, you will have to consider carefully how your child is going to get to the school you prefer. You will have to make sure that your child attends regularly.'

The Act states:

'Where the requirements of pupils, for the conveyance of whom arrangements have been made by an education authority under subsection (1)(a) above, have been met, it shall be the duty of that authority, where there are any vacant places in any vehicle used for such conveyance, to allow such vacant places to be used without charge by other pupils to be selected by the authority.'

