

Scottish Parliament Region: Central Scotland

Case 200600638: North Lanarkshire Council

Summary of Investigation

Category

Local government: Education; handling of complaints

Overview

The complainant (Mr C) raised a number of concerns about the handling of his complaint about the investigation by the education authority of an incident involving his son and another pupil in the school playground at his primary school.

Specific complaints and conclusions

The complaints which have been investigated are that North Lanarkshire Council (the Council) did not:

- (a) properly investigate Mr C's complaint (*upheld*); and
- (b) deal in a timely manner with Mr C's complaint and his request for a copy of the Council's investigation report and the Council's policy of response to assault in a playground (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the failings identified;
- (ii) remind staff dealing with complaints of the importance of explaining how they have reached their decisions; and
- (iii) apologise to Mr C for not sending sooner the two documents he requested.

Main Investigation Report

Introduction

1. The complainant (Mr C) is the father of two sons who, at the time of the incident involved in the complaint, both attended a local primary school (the School). His elder son (Child C) was kicked by another child (Child B) in the playground at the School on 23 December 2005.

2. The complaints from Mr C which I have investigated are that North Lanarkshire Council (the Council) did not:

- (a) properly investigate Mr C's complaint; and
- (b) deal in a timely manner with Mr C's complaint and his request for a copy of the Council's investigation report and the Council's policy of response to assault in a playground.

Jurisdiction

3. In terms of section 8 and schedule 4 (10) of the Scottish Public Services Ombudsman Act 2002, the Ombudsman must not investigate action concerning (a) the giving of instruction, whether secular or religious, or (b) conduct, curriculum or discipline in any educational establishment under the management of an education authority. This prevents me investigating how the School responded to a matter of conduct or discipline in terms of their Promoting Positive Behaviour Policy. That exclusion does not, however, relate to a complaint about how the education authority dealt with a matter referred to them.

Investigation

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

5. On the morning of 23 December 2005 Child C was kicked by Child B. There is a disagreement between Mr C and the Council about the seriousness of the incident. Mr C has described it as an 'unprovoked attack', and has said that when his son was motionless on the ground 'the attacker stamped on his head'. The Council have told me that they do not accept there was an unprovoked attack, and that they believe Child C was kicked once. The other

child involved in the incident, Child B, was suspended from school for three days.

6. On 9 January 2006, Mr C telephoned the then school duty officer at the Education Department. The next day he met with the Acting Head Teacher of the School to discuss the incident and to advise her that he had referred the matter to the police. On 12 January 2006, Mr C wrote to the Director of Education (the Director) expressing his concern that, after his three day suspension, Child B had been allowed to return to the School. Mr C also contacted his Member of the Scottish Parliament (the MSP) who wrote to the Chief Executive of the Council on his behalf.

7. On 1 February 2006 an Education Officer (Officer 1) responded to Mr C's letter of 12 January 2006. He stated that the Council took the health and safety of all pupils very seriously and had procedures in place to deal with any incidents that occur. He said that a full investigation had been conducted by the link officer for the School and that the investigation covered the incident, the measures taken, and the follow-up. Officer 1 expressed his satisfaction that the Head Teacher (whom, unfortunately, he named incorrectly) acted professionally and in accord with the Council procedures. In particular she had, in his view, investigated the incident immediately, taken the action she considered appropriate, and put in place a monitoring process to ensure no re-occurrence happened. Officer 1 understood that at her meeting with Mr C on 10 January 2006 the Head Teacher had offered a restorative conference which Mr C had declined. Officer 1 asked Mr C to consider this as a positive step.

8. Mr C responded to this letter on 10 February 2006 expressing disappointment at its contents. He requested sight of the Council's full report of their investigation of the assault on Child C and also a copy of the Council's policy on response to an assault in one of their playgrounds. Mr C regarded a restorative conference to be inappropriate.

9. In the meantime, the Director responded to the MSP. The Director's letter of 2 February 2006 said that the investigation of Mr C's complaint had revealed that Child C 'had told the Head Teacher he was kicked once, not repeatedly'. The letter said that while Mr C took his son home after the incident, he later brought him back to school and that it was not until after school hours that Mr C took his son to hospital. The Director said that in talking to the Head Teacher and her colleagues who taught Child C and Child B, they stated that both

Child C and Child B had settled and that Child C wished the matter finished. The MSP forwarded this letter to Mr C.

10. Mr C acknowledged the correspondence from the MSP on 27 February 2006 and expressed his concern at the lack of a full and independent investigation from outside the Education Department. Mr C felt that Child B should have been removed from the School and not permitted to return until the matter was investigated in a professional manner with a psychological report being prepared on Child B.

11. On 24 March 2006, Mr C wrote to Officer 1 expressing concern at the lack of a reply to his letter of 10 February 2006. He again requested the full report of the investigation and the Council's policy on response to assault in a playground.

12. This information requested by Mr C on 24 March 2006 was not forthcoming. On 19 April 2006, Mr C wrote to the Chief Executive complaining at the lack of response to his letters of 10 February and 24 March 2006. He pointed out that ten weeks had passed since his requests for a copy of the Council's investigation report and for the Council's policy on playground assault.

13. Mr C's letter of 19 April 2006 was passed to the Head of Service (Officer 2) in the Education Department. Officer 2 responded on 5 May 2006 providing a copy of the School's Positive Behaviour Policy. Officer 2 suggested that Mr C contact the Education Department to arrange a suitable date to attend a meeting at the Education Department's headquarters with Officer 1 and the current link officer for the School.

14. Mr C wrote to the Chief Executive on 13 May 2006 stating that the information provided by Officer 2 was not what he had requested because 'the behaviour policy does not cover criminal assault'.

15. On 23 June 2006, in responding to Mr C's letter of 13 May 2006 to the Chief Executive, Officer 1 sent a copy of the investigation report (see Annex 2) and again invited Mr C to meet with him to discuss the incident.

(a) The Council did not properly investigate Mr C's complaint

16. The Council's substantive response to the complaint is contained in Officer 1's letter to Mr C of 1 February 2006 (see Annex 3). This letter states

that a full investigation was undertaken into what happened in the playground on the morning of Friday 23 December 2005, and measures taken as a result of the incident. The letter stated:

'I am satisfied that [the Head Teacher] acted professionally and in accord with our procedures. She investigated the incident immediately, took what action she considered appropriate and put in place a monitoring process to ensure no re-occurrence happened'.

The letter gave no information about how this investigation was conducted, nor did it indicate what procedures Officer 1 was referring to.

17. The letter from the Director to the MSP of 2 February 2006 gave some more information about findings of the investigation. It also stated that Child C 'wishes the matter to be finished'.

18. Mr C repeatedly asked for copies of the report of the investigation referred to in Officer 1's letter to him. This was eventually supplied to him, and can be found in Annex 2.

19. In making inquiries of the Council we said that we wanted to know what methodology the Council had employed to investigate the matter. In their response the Council told me that the Head Teacher initially investigated, and it was then investigated by the link officer for the School. They also supplied a copy of the note at Annex 2 of this report and of Officer 1's letter to Mr C of 1 February 2006, at Annex 3. They provided no further information about how the complaint was investigated nor how the points made in Annex 2 were arrived at.

20. Mr C criticises the investigation report supplied to him on several counts. He is particularly concerned that there is important information missing. In particular he said that the report should be signed and dated and that all contributors should be named and their contributions included.

(a) Conclusion

21. I can make no judgement on what happened in the playground on 23 December 2005, nor on any action taken by the School to discipline any pupil involved. What I have to decide is whether the Council properly investigated these matters when Mr C complained, including whether they gave him an adequate account of their investigation and its conclusions.

22. Officer 1's letter to Mr C of 1 February 2006 states he asked the link officer for the School to investigate the complaint. The letter then presents Officer 1's conclusions. The letter gives no account of how the investigation was conducted nor of how the conclusions were reached.

23. The Council did eventually send Mr C a copy of the report which is copied at Annex 2. This is also the only report that the Council has sent in response to my enquiry to the Council about how the investigation was conducted (see paragraph 19).

24. This report was described by the Council as 'written in a style to be used at a meeting with a member of the senior management team and not normally for external distribution'. In the light of this statement it is not surprising that it does not include information Mr C was looking for (see paragraph 20).

25. The report does show that the Council, at the least, attempted to establish what happened on the day and afterwards. The report is consistent with the Director's letter to the MSP of 2 February 2006.

26. Mr C has described this report as 'a misleading sequence of events full of inaccuracies', although he has not identified the inaccuracies he refers to, nor did he suggest in his further correspondence with the MSP that the Council had given an inaccurate account of events to her.

27. I could possibly infer from this report some aspects of the Council investigation into Mr C's complaint, and also some of the possible reasons why the Council disagree with Mr C about the seriousness of the incident. However, neither Mr C nor I should have to try to infer this because it is information the Council should be giving.

28. Mr C also complained that the School should have taken more action with the child who kicked his son. The Council have stated their actions were in accord with their policy, but they did not in their responses to Mr C indicate what the relevant policies were. They should have done so.

29. Commenting on a draft of this report, the Council have said to me that the draft report recorded:

'a full and comprehensive investigation of the complaint – and against that background the view of the Council is that the most that can be found – and it is a criticism the Council would accept - is that the Council did not provide Mr C with a sufficiently full account of how the complaint was investigated: that ... is a materially different finding from a finding that the Council had failed to properly investigate.'

30. I have fully considered this comment. I agree with the Council that the two findings they describe are materially different. I also welcome the fact that they accept that they did not provide Mr C with a full account of how the complaint was investigated. However, I do not accept that I have reported on a 'full and comprehensive investigation' of Mr C's complaint by the Council. The Council appear to believe that Annex 2 together with Annex 3 provides a full account of their investigation. My view is they do not, but merely state conclusions about what happened. While the evidence I have suggests to me that the timing of events described in the letter to the MSP (of 2 February 2006) was not significantly inaccurate, it remains the case that the Council have not demonstrated how or why they reached their conclusions. In these circumstances I uphold the complaint.

(a) Recommendations

31. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for failing to tell him how they investigated his complaint and how they reached their conclusions on it; and
- (ii) remind staff dealing with complaints of the importance of explaining how they have reached their decisions.

(b) The Council did not deal in a timely manner with Mr C's complaint and his request for a copy of the Council's investigation report and the Council's policy of response to assault in a playground

32. The Council received Mr C's complaint on 12 January 2006. Officer 1 responded on 1 February 2006. There were no written responses by Officer 1 to Mr C's letters of 10 February and 27 March 2006. The Council have said that there were various telephone discussions, but Mr C refutes this. He said he spoke to the link officer on 9 January 2006 and to Officer 1 on one occasion (on 1 February 2006), but that at no other time did he speak to any officer of the Education Department.

33. In his letter of 10 February 2006 Mr C asked for a 'full report of the investigation into the assault on my son' and for a copy of the Council procedures for 'dealing with an assault in one of their playgrounds'. He repeated these requests in a letter of 19 April 2006, and also reiterated his dissatisfaction with the Council's response to his complaints.

34. On 5 May 2006 the Council sent him a copy of the School's 'Promoting Positive Behaviour – Draft Policy'. They also offered Mr C a meeting with Council officers. Mr C responded that this was not what he was looking for.

35. On 23 June 2006 the Council sent Mr C a copy of the report at Annex 2. On 23 December 2006 Officer 1 wrote to Mr C saying that he had been advised that he should also have provided a copy of the Council's Standard Circular 'Indiscipline and Exclusion Procedures'.

36. In his letters of 5 May and 23 June 2006, Officer 1 also offered to meet with Mr C.

(b) Conclusion

37. I find no fault in the time the Council took to deal with Mr C's initial letter of 12 January 2006.

38. There was no written response to Mr C's letters of 10 February and 24 March 2006. I cannot determine whether there were telephone conversations between Mr C and the Council which dealt with this. Moreover, Mr C's letter of 24 March 2006 was clearly seeking a response in writing. I can see no reason why the Council did not respond in writing. There were also delays in the Council providing the documentation Mr C requested.

39. There are factors which contributed to these delays. There was no formal report on the investigation as such, but only the report prepared for the meeting with staff. Neither the School nor the Council had policies which specifically addressed 'criminal assault' in playgrounds, although both had policies which covered violent behaviour. Furthermore, the Council did not agree with Mr C that his son was criminally assaulted. I have also noted that Officer 1 did offer further meetings with Mr C, and that Mr C did not explicitly respond to these offers. However, the Council could have explained these factors to Mr C, and should have replied to his letters.

40. In all the circumstances I uphold the complaint.

(b) Recommendation

41. The Ombudsman recommends that the Council also apologise to Mr C for the delays I have identified.

42. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The School	The primary school which Child C and Child B attended
Child C	Mr C's elder son
Child B	The pupil who Mr C said assaulted Child C on 23 December 2005
The Council	North Lanarkshire Council
The Director	The Director of Education
The MSP	A Member of the Scottish Parliament
Officer 1	A Council Education Officer
Officer 2	Head of Service, Education Department

(THE PRIMARY SCHOOL) INVESTIGATION REPORT
SEQUENCE OF EVENTS RE [CHILD C] PRIMARY 7

30.01.06 Meeting with Head Teacher and Quality Improvement Officer

[Child B] P6

[Child C] P7

23.12.05 - incident took place - (refer letter from [Chief Executive] - repeatedly kicked - Head Teacher told only one kick).

- [Child C]'s father was in hall when [Child C] was brought in by several children
- Took [Child C] home for lunch
- Returned to school at 13:00 to yard
- Stayed in class all afternoon
- Teacher said he was fine
- [Child B] excluded for three days
- [Child C] taken to hospital later that day (outwith school)
- Incident reported to the police by father at home
- Police charged [Child B] on 23rd – interviewed children from P5, P6 and P7 outwith school
- Monday 9th - school returns – [Mr and Mrs C] informed school and expressed his anger at punishment to [Child B] – too lenient in his opinion
- Head Teacher reported this to ... Education Officer who said that Head Teacher had followed procedure
- Thursday 10th – Head Teacher and Principal Teacher met with [Mr C] and offered a meeting (restorative conference) which he declined the next day - offer still open
- Head Teacher has spoken to psychologist ... in order to arrange a visit with [Child C]. Learning Support teacher has spoken with [Child C] who is adamant that the matter is finished
- Playground is usually supervised by five adults daily (sometimes six) and [Child B] is being closely monitored during this time
- There has been no talk in school by children involved since the incident occurred

- School did not tell [Mr C] to remove [Child C]. The option was given by the duty officer ... at Headquarters as part of his advice. At no time was he told that this was his only option
- The school curriculum addresses issues relating to social and emotional health, eg PATHS programme and visits by Inclusion Development Officer
- Principal Teacher has closely monitored P6 and to date has nothing adverse to report

FOR INFORMATION

- [Mr C] has been advised by the police and not the Head Teacher to stay away from the school
- He now feels that the witnesses are in [Child B]'s class - very unhappy about this

On returning from the Primary School NLC Legal services were telephoned with the information from the investigation carried out in the school. It was verified that a proper investigation had been carried out:

- Investigation - Head Teacher had asked children in school. [Child B] readily admitted the incident
- Punishment - a punishment had been given
- On [Child B]'s return to school there had been no other incidents to date
- The monitoring procedures in school were satisfactory
- The Head Teacher was satisfied that the school provided a safe and secure environment at this moment in time

Copy of Officer 1's letter to Mr C of 1 February 2006

Our Ref:
Your Ref:
Contact:

Date: 1 February 2006

Education Officer

Department of Ed

Municipal Building
Kildonan Street
Coatbridge, ML5 3B7
www.northlan.gov.uk

Dear

I refer to your complaint regarding the attack on your son, Primary School playground on Friday 23rd December 2005 and would comment as follows.

Firstly may I reiterate what I said to you during our telephone conversation, that we do take the health and safety of all our pupils very seriously and have procedures in place to deal with any incidents that occur.

A full investigation into this regrettable event was conducted at my request by the link officer for Primary School this investigation covered the actual incident, measures taken and follow up.

I am satisfied that the Head Teacher, acted professionally and in accord with our procedures. She investigated the incident immediately, took what action she considered appropriate and put in place a monitoring process to ensure no re-occurrence happened.

I do understand that the Head Teacher offered a meeting (restorative conference) at your meeting with her on the 10th January 2006 which you declined. I would ask you to reconsider this offer as a positive step in what I realise is an emotive issue.

Should you wish to discuss this further please contact me on the above number.

Yours sincerely

Education Officer