

**Case 200601783: West Lothian Council**

**Summary of Investigation**

**Category**

Local government: Education; complaints handling

**Overview**

The complainant (Mr C) has a son (Child C) with special educational needs, who attends a secondary school (the School) in the area of West Lothian Council (the Council). Mr C raised concerns over the way the Council's Education Department handled his grievance with the School about adjusting Child C's second year timetable, and the Chief Executive's handling of his formal complaint.

**Specific complaints and conclusions**

The complaints which have been investigated are that the Council's:

- (a) Education Department did not make an appropriate intervention to resolve a problem which had arisen with the School over Child C's timetable choices (*not upheld*);
- (b) Education Department failed to direct Mr C to his entitlement to mediation services (*partially upheld*); and
- (c) Chief Executive did not carry out an appropriate investigation before responding to Mr C's complaint (*upheld*).

**Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the Education Department not referring to the procedures for accessing the Mediation Service in June 2006; for not expediting the mediation requested by Mr C on 23 August 2006; and for the inadequacies in their investigation of, and response to Mr C's concerns; and
- (ii) review Council staff's awareness of the Mediation Service and the availability of the related leaflet.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) lives in West Lothian. His son (Child C) commenced his secondary education at a secondary school (the School) in August 2005. Child C suffers from dyslexia and has speech difficulties. Prior to the introduction of The Additional Support for Learning (Scotland) Act 2004 (the 2004 Act), Child C had had a Record of Needs and an Individual Education Plan. This complaint concerns issues which arose in the spring of 2006 when the choice of subjects for Child C's second year (S2) at the School had to be made; differences which emerged between Mr C and the head teacher; and the way their complaint against the Education Department was handled.

2. The complaints from Mr C which I have investigated are that West Lothian Council (the Council)'s:

- (a) Education Department did not make an appropriate intervention to resolve a problem which had arisen with the School over Child C's timetable choices;
- (b) Education Department failed to direct Mr C to his entitlement to mediation services; and
- (c) Chief Executive did not carry out an appropriate investigation before responding to Mr C's complaint.

### *Legal Background*

3. Sections 5(1) and 15 of the 2004 Act, which became law on 14 November 2005, require that every education authority must, in exercising any of their functions in connection with the provision of school education, take account of the additional support needs of children and young persons having such needs, and must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or to resolve disagreements between the authority and parents of children concerning the exercise by the authority of their functions under the 2004 Act in relation to such children or young persons.

4. Section 8 and paragraph 10 of Schedule 4 of the Scottish Public Services Ombudsman Act 2002 state that the Ombudsman must not investigate, among other things, action concerning curriculum in any educational establishment under the management of an education authority.

## **Investigation**

5. The investigation is based on information provided by Mr C in writing and at interview 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 drafts of this report. I very much regret that for a variety of reasons the process of investigating this complaint has taken much longer than it should have done. I apologise to Mr C and the Council for that.

6. Child C commenced first year (S1) at the School in August 2005. In May 2006 he had to make choices for his 2006/07 second year (S2) timetable. To realise his career ambitions Child C required to take Physics. The School felt that an alternative syllabus would be best for Child C in S2, but Physics was not offered as part of the alternative syllabus. The standard syllabus which included Physics would have entailed Child C taking French classes. Mr C was not happy with this since Child C had not been receiving additional learning support in his French classes for his dyslexia and speech difficulties and he believed Child C had struggled. Mr C stated that in either May or early June 2006, the Council's Additional Learning Needs Manager (Officer 1) informed him that if he had a disagreement with the school over Child C's education, he had the option of mediation. He had not been directed to any leaflet produced by the Council and had to resort to the internet to access details of the mediation service (the Mediation Service).

7. When Mr C received no assurance from the head teacher that additional learning support would be provided to Child C, he telephoned the Education Department's Support Services Manager (Officer 2) on 9 June 2006. According to Mr C he had three telephone conversations with Officer 2 on 9 June 2006 and he made Officer 2 aware that Child C had a Record of Needs and an Individual Education Plan.

8. After telephoning the head teacher at the School, Officer 2 learned that support was not currently in place for Child C in his S1 French classes and it would not be practical to have a support assistant in each French class for Child C from the start of the new session on 21 August 2006, but Child C would have support as soon as a need became evident. Officer 2 relayed that information to Mr C. According to the Council, Mr C indicated that he was dissatisfied and that it was his intention to refer the matter to the Mediation Service.

9. Mr C stated that it was during a third call with Officer 2 that he had queried how he should pursue the matter. He asked Officer 2 whether the Council were required to offer mediation in a case of disagreement. He stated that Officer 2 was hesitant and seemed not to know of the requirement. It was then that Mr C indicated that he wished to go to mediation.

10. Mr C subsequently contacted the Mediation Service, but the matter was not progressed during the summer recess. Mr C stated that a mediator in that service informed him that she had contacted the Council to make arrangements for a meeting. When they did not thereafter contact her, regrettably she forgot to press the matter.

11. Mr C stated that with the new school session about to commence in August 2006 he had contacted either the Mediation Service or an education advice helpline and learned that the request for a mediation meeting would require to come from the Council.

12. According to the Council, Mr C subsequently telephoned Officer 2 again on Wednesday 23 August 2006 some two days after the new session commenced. Mr C referred to his earlier telephone call on 9 June 2006. Officer 2 confirmed that he had not previously referred Mr C to the Mediation Service, but that Mr C had suggested that he would contact that body. Officer 2 telephoned the head teacher to check on Child C's progress. The head teacher informed Officer 2 that support was available for Child C in his French classes and would be implemented later that week. Officer 2 then telephoned Mr C back. Mr C had not been aware of the proposed support but remained unhappy. According to Officer 2, Mr C stated that he did not consider that Child C should have to take French classes. He requested that the authority initiate the provision of mediation.

13. Officer 2 contacted Officer 1 on 25 August 2006. Officer 2 then spoke to a mediator in the Mediation Service and the head teacher and arranged contact between the two regarding Mr C's request. Officer 2 stated that thereafter he telephoned Mr C to confirm the action he had taken.

14. Mr C emailed the Director of Education and Cultural Services (the Director) on 2 September 2006 and complained about the level of support Child C was receiving from the School. He stated that neither the main

syllabus, including French classes, nor an alternative syllabus offered by the School suited Child C's individual requirements and that Child C was being forced to take French classes against Child C's and Mr C's wishes. Mr C stated that Officer 2 had failed to understand his complaint or to refer him to mediation.

15. The Director acknowledged the complaint on 4 September 2006 and called for reports from Officer 1 and the head teacher. Mr C responded later that day saying he had spoken to Officer 1 previously (in May or June 2006) and that Officer 1 had informed him that if he remained in disagreement with the School he should contact the Mediation Service. Mr C asked whether mediation was a legal requirement and if there was a prescribed timescale.

16. Officer 1 responded to the Director on 4 September 2006. He confirmed that he had spoken to Mr C and was aware that Mr C had contacted the Mediation Service. He undertook to follow that up with the Mediation Service. Officer 1 stated that his responsibility was for additional learning needs. If the issue was that Mr C wished to remove Child C from a modern language class, then that was a matter for the head teacher. The Director immediately contacted Mr C by email and referred to the 2004 Act.

17. The following day, the head teacher responded to the Director in a detailed email stating that Child C had flourished in S1 and that his reports had been good. She referred to a review meeting held at the School on 24 May 2006 attended by Mr C and his wife (Mrs C) and an educational psychologist. At that meeting, Mr and Mrs C had been against Child C joining an adapted curriculum. They agreed to him continuing with French classes provided he had support at all times. The head teacher said that she could not promise this, particularly since, in her view, Child C was doing well in the subject. She stated that following the summer break there had been a support assistant in Child C's French class for one period per week.

18. The Director emailed Mr C on 7 September 2006 saying that he had asked the head teacher to meet with Mr C following on his contact with the Mediation Service. He stated that Mr C should contact Officer 1 if the Mediation Service had not contacted him. The Director also stated that if Mr C was unhappy with the service at the School he should contact the Council's Senior Education Manager (Officer 3). Mr C responded on the same day expressing the view that a further meeting with the School would be unproductive but that he would be willing to meet other officers of the Council. The Director responded by email of

8 September 2006 saying that Officer 1 had been instructed to resolve the matter with urgency.

19. On 14 September 2006, Mr C emailed the Director complaining of the lack of further contact with the exception of the head teacher who had telephoned him that evening. The Council have stated that the head teacher telephoned to make arrangements for a proposed mediation meeting on 25 September 2006 and that she repeated an option previously discussed of Child C coming out of his French class and spending the three periods in the School's Learning Support Base.

20. Mr C also contacted the Chief Executive's office via the Council's contact centre to request a meeting. As the Chief Executive was not available, a Project Officer in that office (Officer 4) made an arrangement for Officer 3 to meet with Mr C, and that meeting took place on 15 September 2006. Mr C was extremely concerned when Officer 3 had suggested to him, soon after the meeting commenced, that Child C could go to a special school.

21. For his part, Officer 3 stated that at the meeting with Mr C on 15 September 2006 he had set out the same options for Child C's education that had been put to Mr C previously by the head teacher. He said that Mr C continued to disapprove of each option and Mr C offered two alternatives which were unacceptable to the School. Officer 3 then advised Mr C of rights that he might exercise. Firstly, he might choose another secondary school where acceptable options were available for Child C because of differences in timetabling. Secondly, by virtue of Child C's Record of Needs, Mr C could apply for a place at a special school which might provide the level of support he desired for Child C which was unobtainable in a mainstream setting.

22. On 24 September 2006, Mr C emailed the Director after speaking that evening with a mediator at the Mediation Service. He stated that the mediator, who works in a voluntary capacity, apologised for the delay which she attributed to a misunderstanding. In the email, Mr C also made a request under the Freedom of Information legislation regarding to whom he should complain about lack of provision of a service and on the Council's use of, and success with, mediation.

23. Following the mediation meeting held on 29 September 2006, Mr C emailed Officer 4 for onward transmission to Officer 3 on 1 October 2006 stating

that the head teacher now agreed with Mr and Mrs C's concerns that Child C was having a problem with his French classes. The head teacher had suggested, and they had agreed, that Child C be moved to another class for French to see how he got on with a different teacher with additional agreed support. If after a suitable time he did not settle, Mr and Mrs C would insist that he be removed from French classes. Mr C expressed concern that no senior manager from the Education Department had attended the mediation. He indicated that, now that the situation had hopefully been resolved, he would be seeking a meeting with the Director to explore why it had taken five months to arrange a mediation meeting, why Officer 1 had not contacted him, and why questions he had raised had not been answered.

24. This email was forwarded by Officer 4 to Officer 3 and the Director. The Director sought the observations of the head teacher and she responded on 2 October 2006. She had found the meeting positive. She had taken on board Mr and Mrs C's concerns, had identified that the teaching style in Child C's current French class might not suit him and she had offered an alternative. The meeting had ended amicably. Mr C had indicated that they would pursue further matters relating to the Director and Officer 1. They wished also to arrange another review meeting for Child C.

25. On 3 October 2006, the Chief Executive wrote to Mr C noting the outcome of the meeting on 29 September 2006. The letter indicated that should Mr C have further concerns he should contact the Council's Head of Education (Officer 5). That letter was copied to the Director, Officer 3 and Officer 5.

26. Child C had, however, returned home distraught on 4 October 2006 when there had been a mix up at the School over the implementation of the solution agreed the previous Friday. Mr C contacted the office of Officer 5 that day expressing his dissatisfaction with the outcome of mediation. He requested a meeting with Officer 5 and other officers. Officer 3 responded on 6 October 2006 by email. He defined the possible alternatives, previously offered by the head teacher and discussed with Mr C prior to the summer break. These were that Child C join the adapted curriculum or attend the Learning Support Base when French classes were scheduled. Officer 3 emphasised in that email, in a subsequent telephone conversation, and in a further email of 10 October 2006 that no other options existed.

27. In the meantime, Mr C also emailed the Chief Executive's office on 8 October 2006 stating why he found Officer 3's response unacceptable. The Chief Executive's office was aware that Mr C had also emailed the head teacher for clarification of one of the options outlined by Officer 3 and advised Mr C that he should await the outcome of his contact with the head teacher.

28. Mr C contacted the head teacher on 8 October 2006. Following a series of emails over the next three days, it was agreed that Child C would attend the Learning Support Base at the School instead of studying French language when he returned to the School on 24 October 2006 following the October break. That change was effected and remained in place throughout the remainder of S2. Rather than mix with other pupils referred to the Learning Support Base for behavioural problems, Child C attended the School library next door and assisted the School librarian during the three periods.

29. Mr C submitted a formal complaint by email to the Chief Executive on 29 October 2006 about Education Services. The email raised five points, namely that: Officer 2 had been unaware of the legal requirement that Education Services are obliged to offer mediation; Officer 1 had resisted becoming involved and had not contacted Mr C after being instructed to do so by the Director; it had taken the Council five months to arrange a mediation meeting; Officer 3's involvement had been unprofessional and insensitive; and the Council had failed to provide information, within 20 days, requested of the Director on 24 September 2006.

30. The Chief Executive responded in a letter of 7 November 2006:  
'... I understand that [the head teacher] has held a series of meetings with you to resolve your complaint about an aspect of your son's education. Over this period she believes that she offered a resolution of your complaint, and continued to respond to you at this local level where, ideally a complaint should be resolved.

Whilst you were in contact with [the head teacher] you also contacted a number of education officers including the Director of Education and also my office to discuss your concerns. I believe that this may have confused the issue and may well have delayed the resolution, which you and the School agreed in October. All officers who were involved in this case were seeking a resolution to your concerns, which was most appropriate through [the head teacher]. This was not an indication of not being



interested, but of trying to resolve the complaint with the School where your son attends in the quickest time possible.

I have investigated your complaints about both [Officer 1] and [Officer 3]. The outcomes of my investigation will be dealt with in an appropriate manner internally. I regret that you have found staff responses to your complaint unsatisfactory.

In response to your Freedom of Information request, I apologise that there was a delay in providing this information to you. The information is as follows:

- The Chief Executive, West Lothian Council, is the appropriate person to complain to about provision of a service, if you are dissatisfied with the response you have received from a service director ...
- To date the Mediation Service has been used twice
- Mediation is a process, however, on both occasions the matter was resolved.'

31. The Chief Executive also informed Mr C of his right to request an internal review of his Freedom of Information request and of his ability to complain to the Scottish Public Services Ombudsman.

32. Mr C referred his complaint to the Ombudsman's office by email on 12 November 2006. He stated that the Chief Executive's office did not adequately investigate the matter because they did not allow him the opportunity to meet with them and they had failed to answer two of the points raised, namely, why did Officer 2 not know of the legal requirement under the 2004 Act and why it took over five months for the Council to supply a service when requested to do so on a number of occasions.

33. When Mr C emailed the Council on 12 November 2006 seeking a reply to the outstanding matters, he received a reply from Officer 4, which simply noted his comments.

**(a) The Council's Education Department did not make an appropriate intervention to resolve a problem which had arisen with the School over Child C's timetable choices**

*(a) Conclusion*

34. At the heart of this complaint is the interface of meeting Child C's special needs in a mainstream setting, and Mr and Mrs C's concern about suitable timetable choices. The documentary record provided by the Council suggests that Mr and Mrs C would at least initially have been content for Child C to have continued in his French classes in S2 with additional support being agreed in advance for each class period. The head teacher, whose responsibility it is to consider matters of curriculum and to deploy additional learning support resources, was not able to guarantee in advance that level of support provision for Child C.

35. When Mr C contacted Officer 2 on 9 June 2006, Officer 2's reaction, quite properly, was to contact the head teacher, establish the school's position and relay it to Mr C. While Mr C feels that Officer 2 should have intervened in a manner which would have led to an outcome satisfactory to Mr C, Officer 2 was entitled to listen to both sides and to exercise his professional judgement that the head teacher's position had been explained and he need not intervene. I do not uphold this complaint.

**(b) The Council's Education Department failed to direct Mr C to his entitlement to mediation services**

*(b) Conclusion*

36. Mr C by his own statement had been made aware of the possibility of mediation from Officer 1, before he spoke to Officer 2 on 9 June 2006. He has informed me that he was never at any time directed to the Council's leaflet (Annex 3). I do not consider that Officer 2's response to Mr C was as helpful as it might have been. Mr C was not simply disagreeing about Child C's timetable but was voicing his concern, as a parent of a son with special needs, that Child C would not cope in French classes without support, and that support was not guaranteed. I consider that Officer 2, while entitled to express his support of the head teacher's position, should also have stated that Mr C was entitled to seek mediation, ascertained whether Mr C was acquainted with the Council's leaflet, and directed Mr C to the appropriate contact officer. Since mediation requires the agreement of both parties, the Council's willingness to engage could also have been confirmed. Unfortunately, since Mr C only confirmed his unhappiness by telephone before the summer holidays and made no formal

request, minds were not focussed to have the mediation carried out before classes resumed.

37. I consider that after Mr C's next contact with the Education Department on 23 August 2006, and after Officer 1 was contacted by Officer 2 on 25 August 2006, arrangements for the proposed mediation should have been made with more urgency, particularly in light of the instruction which the Director said he had given to Officer 1.

38. The Council had made arrangements for mediation to be in place and had produced a leaflet about this. However, this investigation has shown that there was a lack of clarity in making information about how to access mediation available to Mr C, and the leaflet giving information was neither offered nor easily accessible to him. There is also some evidence that Council officers themselves may not have been fully informed about how to access mediation and that there may have been a lack of clarity in communications between the Council and the organisation providing mediation. There is also a lack of clarity as to whether officials of the Education Department should have been involved in the actual mediation. I, therefore, partially uphold the complaint to the extent that information about how to access mediation was not readily and clearly accessible.

*(b) Recommendation*

39. The Ombudsman recommends that the Council apologise to Mr and Mrs C for the Education Department not referring to the procedures for accessing the Mediation Service and for the Education Department not expediting the mediation when it was raised by Mr C on 23 August 2006. The Ombudsman also recommends that the Council review the state of awareness of officers of the Mediation Service and the availability of their leaflet.

**(c) The Council's Chief Executive did not carry out an appropriate investigation before responding to Mr C's complaint**

*(c) Conclusion*

40. The complaint is complicated by the fact that Child C is a young person with special needs in mainstream schooling. Generally, the head teacher would have the final say in timetable issues and the deployment of additional resources for pupils with special needs but, in the event of disputes involving those pupils, parents can, under the 2004 Act, be offered mediation.

41. There was considerable correspondence between Mr C and the Council. This involved both attempts to address the underlying issues and formal complaints. In general, the Council did try to address issues as they were raised by Mr C. It is also the case that the issues complained about to some extent evolved over the course of time. By the time the Chief Executive replied on 7 November 2006 to Mr C's complaint of 29 October 2006, many of the underlying educational issues were resolved, and I consider that this may have influenced the way the response letter was written. I also do not consider that it was necessary for the Chief Executive to have met with Mr C.

42. However, Mr C was unhappy with the way the Council had responded to him and was making a formal complaint about this which required a response to all the issues raised, even if each point need not have been addressed individually. Whilst it is clear that considerable efforts were made to address the issues raised by Mr C, the Chief Executive's formal reply to Mr C's complaint was neither comprehensive nor transparent in reviewing the actions of the Education Department. Given that, I uphold this complaint.

*(c) Recommendation*

43. The Ombudsman recommends that the Council apologise for the failings in their investigation of, and response to, Mr C's concerns.

**Explanation of abbreviations used**

Mr C	The complainant
Child C	Mr C's son
The School	The secondary school that Child C attends in West Lothian
The 2004 Act	The Additional Support for Learning (Scotland) Act 2004
S2	The School's first year
The Council	West Lothian Council
S1	The School's first year
Officer 1	The Council's Additional Learning Needs Manager
The Mediation Service	An independent mediation service
Officer 2	Support Services Manager
The Director	Director of Education and Cultural Services
Mrs C	Mr C's wife
Officer 3	Senior Education Manager
Officer 4	Project Officer, Chief Executive's Office
Officer 5	Head of Education

**List of legislation and policies considered**

The Additional Support for Learning (Scotland) Act 2004

### **The Council's Leaflet on Mediation**

The Council prepared a leaflet on the Mediation Service they provide in conjunction with the Mediation Service. The leaflet was reprinted in December 2005 but makes no specific reference to the Additional Support for Learning (Scotland) Act 2004. The leaflet describes what mediation is, who can use the service, who mediates and what process the mediation follows.

In summary, the Mediation Service is for parents/carers of children with additional support needs, and provides a method of conflict resolution that enables people who seriously disagree to reach a mutually acceptable solution with the help of a third party, the mediator. The leaflet states that either the parent or the Council can access the service if they foresee areas of potential conflict. Mediators who are trained in mediation skills and have an understanding of additional support needs employ an independent approach to each situation. In describing the mediation process, the leaflet states:

'When both parties decide that mediation might be the way ahead, a mediator will contact them separately to arrange a meeting. There will be an opportunity to discuss the situation in complete confidence and decide if mediation would be beneficial.

In some situations, mediation may not be necessary as the conflict may be resolved by informal contact between the family, the mediator and the local authority.'

The leaflet gives the contact details for the Mediation Service and the name and telephone number of a Principal Support Officer.