

**Case 200502514: North Lanarkshire Council**

**Summary of Investigation**

**Category**

Local government: Primary School

**Overview**

The complainant (Mrs C) raised a number of concerns about the way complaints were dealt with by North Lanarkshire Council (the Council) and the Council's Education Department (the Department).

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council failed to properly handle complaints made by Mrs C and her husband (Mr C) (*upheld*); and
- (b) procedures in the Department for considering complaints are biased against the complainant (*upheld to the extent that there is insufficient independence in the complaints process*).

**Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) apologise to Mr and Mrs C for the failings identified in the handling of the complaints; and
- (ii) review their complaints process and include an independent element in the final stage of the process for handling complaints about education.

Additionally, the Ombudsman suggests that the Council should ensure that information about how to make a complaint about a school or their staff is made available in the Council's schools.

## **Main Investigation Report**

### **Introduction**

1. During 2004 and 2005 the complainant (Mrs C) and her husband (Mr C) made a number of complaints to the primary school (the School) attended by their children. These concerned granting permission for holidays in term time; the introduction of a buddy system within the School for safety reasons; how easily children could access toilets; and an incident in the playground involving an altercation between five-year-old children.

2. On 3 March 2005, Mr and Mrs C met with the head teacher (the Head) and the deputy head teacher (the Deputy Head) of the School. The meeting did not resolve matters. Subsequently Mr and Mrs C made their complaints to North Lanarkshire Council (the Council)'s Education Department (the Department) and also complained to them about the conduct of the Head at the meeting.

3. Mr and Mrs C pursued their complaints through the complaints process of the Council. They also raised several other complaints about the Head and about the Council's complaints handling.

4. The Council did not uphold Mr and Mrs C's complaints and Mrs C complained to the Ombudsman on 8 December 2005. She complained that the Council failed to investigate complaints properly; were unwilling to acknowledge any problems in their complaints policy; had complaints procedures that were geared in such a way that made it impossible to have a positive outcome on the side of the complainant; failed to adhere to their own guidelines; failed to adhere to timescales for data protection legislation; that the Council leader abused his position; and that the Council had staff who knowingly covered up the inappropriate behaviour of other staff.

5. This investigation was largely completed under my predecessor. Two draft reports were issued to Mrs C and to the Council during that time. In order to bring matters to a conclusion I have reviewed the evidence, revised the report, and give my findings.

6. I did not investigate the complaint about data protection legislation as such issues are primarily for the United Kingdom Information Commission to consider. Further, I did not investigate the complaint about the Council leader because that would be a matter for the Standards Commission. I decided that

the other aspects of the complaints could be considered by investigating first, how the Council responded to the complaints made by Mr and Mrs C and second, the procedures in place in the Department for considering complaints.

7. I also note that the Scottish Public Services Ombudsman Act 2002 states that the Ombudsman must not investigate action concerning conduct, curriculum or discipline in any educational establishment under the management of an education authority.

8. The focus of this investigation has been the Council's handling of the complaints made by Mr and Mrs C. The specific complaints from Mrs C which I have investigated are that:

- (a) the Council failed to properly handle complaints made by Mr and Mrs C; and
- (b) procedures in the Department for considering complaints are biased against the complainant.

9. Mr and Mrs C and a Member of the Scottish Parliament (the MSP) have also complained about the involvement of Council staff in events that have arisen during the course of the consideration of their complaints. They believe that there have been attempts by Council employees to intimidate them into dropping their complaints by, for example, making complaints about Mr C to his employers. I have, therefore, given consideration to this matter in addition to the original heads of complaint.

### **Investigation**

10. In the course of this investigation the complaints correspondence between Mr and Mrs C and the Council has been read, as well as further information that Mrs C subsequently received from the Council. A member of my staff met with Mr and Mrs C and made enquiries of them. He also made enquiries of the Council and interviewed officers of the Department. In addition, he considered representations made on behalf of Mr and Mrs C by the MSP and held meetings with him. The former Ombudsman also held meetings with Mrs C, the MSP and two officials of the Council.

11. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C, the Council and the MSP were given an opportunity to comment on drafts of this report.

12. Before addressing the specific complaints, I set out below the Council's process for handling complaints and the practice in the Department for dealing with complaints about schools.

*The Council's complaints handling process and practice in the Department*

13. The Council's corporate procedure for handling complaints at the time in question was outlined in their leaflet: 'Did we get it wrong?'. The way this procedure is operated by the Department is outlined in a further leaflet: 'Complaints Leaflet for Education Headquarters and Establishments'. In the case of complaints about schools, these procedures can be used if a complaint is not resolved within the school.

14. The first stage of the procedure is comparatively informal. A duty officer in the Department will normally deal with a complaint at this stage, often by telephone. The stated aim of this stage is to achieve 'a satisfactory resolution of the situation'.

15. The second stage of the procedure is for the complainant to write formally to the Department if they remain dissatisfied. The complaint will usually be responded to within ten days, or a letter will be sent giving the reasons for the delay and the action to be pursued. In such cases it is stated that 'the Department will try to ensure that the complaint is resolved and a response sent to you within 21 days from receipt of the original letter'. Should the complainant remain dissatisfied, the final stage of the process as described is to appeal in writing to the Council's Director of Education.

16. At interview, officers of the Council said that when the Department is considering a written complaint at stage two of the process, the education officer responsible for the school concerned would usually deal with it. The education officer is a principal link between the Department and a group of schools, having management, oversight and pastoral care responsibilities for the school and its head teacher, as well as the role of investigating complaints. I was also told that responses at stage three of the process were usually delegated by the Director of Education to a head of service, who would be the line manager of the education officer involved.

*Chronology of events in the process of handling Mr and Mrs C's complaints*

17. In this section of the report, I summarise the issues that led to the raising of the complaints, and the chronology of the main events in the process of handling Mr and Mrs C's complaints.

18. As stated above (see paragraph 1) Mr and Mrs C raised concerns with the Head about a number of issues. These included their request for the granting of permission for holidays in term time; the introduction of a buddy system in the School for safety reasons; the ease with which children could access toilets; and an incident in the playground involving an altercation between five-year-old children.

19. Between September 2004 and March 2005 there were several telephone conversations between Mr and Mrs C and officials in the Department about their concerns. These conversations can be regarded as forming the first informal stage of the complaints process, although all the issues raised may not have been formulated or necessarily regarded as complaints.

20. On 3 March 2005 the Head and the Deputy Head met with Mr and Mrs C to discuss their concerns. The meeting did not resolve matters and Mr C subsequently telephoned the Council to say he wished to make a complaint.

21. In a letter dated 7 March 2005 Mr and Mrs C complained, among other issues, about the behaviour of the Head and Deputy Head at the meeting.

22. In a letter, dated 7 March 2005 the education officer responsible for the School (Officer 1) told Mr and Mrs C he had received a report from the Head following the meeting of 3 March 2005. He said that the Head felt that Mr and Mrs C's manner at the meeting was unnecessarily aggressive towards her and the Deputy Head. He said that Mr and Mrs C's behaviour appears to have been inappropriate and asked them to raise any future matters with the Head in a co-operative manner. Mr and Mrs C state that they did not receive this letter until 15 March 2005. Additionally, as a result of a request for information which they made to the Council, they subsequently obtained two other versions of this letter, one also dated 7 March 2005 but quoting a different contact name, and the other dated 17 March 2005.

23. On 9 March 2005 the Council acknowledged receipt of a letter from Mr and Mrs C which was passed to Officer 1 for his attention. On the same day

a memo was sent to Officer 1 referring to an enclosed letter of complaint from Mr and Mrs C about the Head and the Deputy Head. Officer 1 considered this complaint under the second stage of the Council's complaints process.

24. On 15 March 2005, following receipt of Officer 1's letter of 7 March 2005 regarding their alleged behaviour at the meeting with the Head and the Deputy Head, Mrs C telephoned the Department expressing concern that the person who was to investigate the complaint she and her husband had made was the same person who had sent the 'warning letter' to them. Mrs C stated that on 17 March 2005 the Head of Quality and Support Services (Officer 2) telephoned her to say that there was no conflict of interest and that enquiries into her complaint were almost complete.

25. Also, on 15 March 2005 Mr and Mrs C wrote to Officer 1 requesting copies of the report from the Head about their behaviour, and of all other data held on them and on their children who attended the School (see paragraph 34 below).

26. On 22 March 2005, Officer 1 wrote to Mr and Mrs C saying that his investigation had been completed, but that he wanted to make some further checks. He apologised that he would not be able to complete these before 11 April 2005, but said that he hoped to meet Mr and Mrs C that week. Mrs C was concerned about the delay and she wrote to the Director of Education on 28 April 2005. On 29 April 2005, Officer 2 rejected the complaint about delay on the grounds that Officer 1 had kept in contact and explained what he was doing.

27. Also, on 29 April 2005 Officer 1 responded to the original complaints. As regards the first complaint (about holiday arrangements) he acknowledged shortcomings for which he said the Head had apologised. On the second issue (the buddy system) he said that head teachers have the authority to make such decisions. In relation to the third aspect (toilet arrangements) he said that there was no evidence that the Head had ever said that children should be refused permission to go to the toilet during class time. With regard to the playground incident he said that the School's view was that there was no assault but rather rough play between pupils, which was unacceptable but had been dealt with. In addition he addressed Mr and Mrs C's concerns about the meeting on 3 March 2005, saying that the Head and the Deputy Head disputed the parents' account of the meeting and that it was difficult for him to 'prove' one person's statement against another. He also made general comments about the context

in which schools operate, including making reference to the extensive degree of authority delegated to a school and the importance of trust between parents and schools. He said that the Head was highly regarded and that she was keen to move the situation forward. He said that he would be happy to arrange a meeting between Mr and Mrs C, the Head and himself 'with a view to establishing a basis from which all could move forward'. He also said that this would require a 'mutual putting behind of what has gone before and a willingness to progress ...'. In addition, he offered to meet with Mr and Mrs C himself as a precursor to such a meeting and to discuss his response in detail.

28. Following receipt of the letter, Mr C contacted an officer in the Chief Executive's Department and talked with him about the complaints. Mr C subsequently provided a list of 61 questions that he proposed to ask Officer 1 at a meeting which had been arranged for 16 May 2005.

29. On 16 May 2005 Officer 1 and another official (Officer 3) met with Mr and Mrs C. The meeting lasted a considerable length of time. It did not resolve matters.

30. Mr and Mrs C made a further complaint to the Council about how their complaints had been handled. This covered the original four issues, the meeting of 3 March 2005 with the Head and the Deputy Head, the meeting of 16 May 2005, and concerns about the way the complaints process operated. On 24 May 2005 the Chief Executive acknowledged receipt of the complaint and told Mr and Mrs C that he had passed it to the Department for a response. On 25 May 2005 the Department informed Mr and Mrs C that Officer 2 would consider the complaint. Officer 2 was the line manager of Officer 1.

31. Officer 2 responded in a letter of 9 June 2005 in which he said that he had investigated the complaints by reviewing the written correspondence and interviewing officers who had been directly involved. He concluded that the complaints had been dealt with in line with departmental policy and the Council's complaints process. His letter did not refer to any of the substantive issues complained about.

32. Between 15 and 19 June 2005, additional complaints were submitted by Mr and Mrs C (as summarised below).

*Complaint*

15 June. Regarding Officer 2's review of the handling of the original complaints

15 June. About the Head in relation to a newspaper article about the contract for provision of school uniform and her letter of explanation

15 June. About Officer 1 regarding comments attributed to him in a newspaper article

15 June. Regarding comments attributed to Councillors in the Head's letter

16 June. About an announcement the Head was said to have made in a school assembly

19 June. About delay by the Head in informing parents of a consultation exercise

19 June. Complaint that the Department had not responded to requests for information

*Response*

28 June. From the Director of Education, complaint not upheld, referral to Ombudsman

21 June. From Officer 2, one sentence letter, complaint not upheld

21 June. From Officer 2, one sentence letter, complaint not upheld

23 June. From the Councillors' Group Whip, noting the comments

24 June. From Officer 1, complaint not upheld

24 June. From Officer 1, delay was as a result of an oversight, apologies offered

24 June. From Officer 1 (see paragraph 34)

33. There is a memo from the Chief Executive dated 16 June 2005, which refers to 'the number of officers involved in responding to Mr C's complaints'. An internal email of 17 June 2005 says:

'An increasing number of officials in the authority are becoming involved in these matters ....

I am concerned to conclude these matters as quickly as possible before the situation becomes critical.'



34. Officer 1 wrote on 24 June 2005 in response to the data access request of 15 March 2005 (see paragraph 25):

'I can confirm that [the Head] and [the Depute Head] did complete and return to the authority Violent Incident Report Forms .... You will be aware that I wrote to you on 7 March 2005 as a result of those forms being received ....

I would advise you that in accordance with fair processing requirements under schedule 2 of the Data Protection Act 1998, details of the incident have been disclosed to the police, as your employers, for the exercise of any functions of a public nature exercised in the public interest by any person.<sup>1</sup>

Officer 1 has said that he made the decision to send these reports to the police, and that he took advice from the Council's legal department.

35. Mr C works as an officer in a police force. Mrs C was concerned that his employers had been contacted in this way. She was also concerned that the Head, and later Officer 1, made complaints about Mr C to the police.

**(a) The Council failed to properly handle complaints made by Mr and Mrs C**

36. Mr and Mrs C were concerned about the way in which the issues they raised with the School were handled by the Head and subsequently by other Council officers in considering their complaints. They were further concerned with the way in which the Council officials dealt with their complaints, culminating in complaints being made about Mr C to his employers. They have questioned the thoroughness of the investigation of their original complaints by the Council; the failure of the Council to answer their key questions; the different or inaccurate accounts of events given by the Council; and the alleged lack of independence of the complaints process.

37. In addressing this head of complaint I have sub-divided it into four key elements: the handling of the four original complaints; the handling of the

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<sup>1</sup> Schedule 2 of the Data Protection 1998 is headed: 'Conditions Relevant for Purposes of the First Principle: Processing of Any Personal Information'. 5(d) of the schedule reads: 'The processing is necessary for the exercise of any other functions of a public nature exercised in the public interest by any person'.

complaint about the meeting on 3 March 2005; general complaint handling and record-keeping issues; and the reporting of Mr C to his employers.

*The four original complaints*

38. The first of these concerned permission for holidays in term time. In his letter of 29 April 2005, Officer 1 acknowledged that there had been shortcomings in dealing with this matter and said that the Head had apologised for these. Mr and Mrs C deny that they had received an apology from the Head and were aggrieved that despite supplying the required written information from Mr C's employers they did not receive confirmation from the Head that the holiday had been authorised.

39. The second of the original complaints concerned the introduction of a buddy system and the way that the Head initially responded when Mrs C and other parents expressed concerns about this, giving no indication that she was prepared to consider their points. However, the Head subsequently made adjustments to her proposal which satisfied parents. In his response Officer 1 said that the matters were discussed with the Parent Teacher Association and had their agreement; it was entirely appropriate for the Head to implement this system; the Head had the authority to make those decisions; and the buddy system was working very well.

40. The third complaint involved issues about how easily children could access toilets. In their original letter of complaint Mr and Mrs C said they had received information from the school nurse that the Head was refusing children permission to go to the toilet during class time in order to encourage bladder control. Further, their daughter's class teacher had told them that the Head had given instructions to record the names of children asking permission to go to the toilet during class time.

41. During his investigation of the complaint Officer 1 asked the Head what instructions she had given to class teachers about this and her statement is summarised in his decision letter of 29 April 2005. The Head was clear that at no time had she suggested that children should be refused permission to go to the toilet to encourage bladder control; and that contrary to the remarks attributed to the class teacher, teachers had not been asked to note the names of children going to the toilet. The letter recorded that the Head had spoken to

the class teacher about what Mr and Mrs C said she had told them<sup>2</sup>. Mr and Mrs C understood that Officer 1 had not contacted any of the named members of staff to see if they could verify or deny the statements attributed to them by Mr and Mrs C or to explore with them their understanding of the School policy. During his consideration of the complaints, Officer 1 interviewed the Head and Officer 3 interviewed the Deputy Head. During the course of this investigation the Council provided information that Officer 3 and the Deputy Head interviewed the school nurse.

42. The fourth of the original complaints arose from an incident in the playground involving five-year-old children. The complaint made by Mr and Mrs C to the Council focused on the way the Deputy Head responded to this incident. Mr and Mrs C described this incident as an 'assault' on their son. Officer 1 said that the School viewed it as an incident of 'rough play'.

43. In their initial letter of complaint, Mr and Mrs C said that, having discussed this incident with the Deputy Head, they understood that it was not observed. The letter from Officer 1 said that the incident was 'broken up immediately by the classroom assistant on playground supervision'. Mr and Mrs C had also objected to the way the Deputy Head involved their son in trying to identify the other boy involved. Officer 1 said that he considered the School took appropriate action.

44. During the investigation the Council said that, because the classroom assistant had moved to another school, Officer 1 asked her current head teacher to clarify whether she witnessed the incident in the playground between the children involved. They said that the classroom assistant confirmed that she did not witness the incident itself, but became involved afterwards on being advised that an incident had taken place.

#### *The meeting on 3 March 2005*

45. Mr and Mrs C stated in their complaint to the Council that the Head was 'confrontational', 'aggressive' and 'used bullying tactics'. As indicated above, following the meeting Mr C telephoned the Council to say that he would be submitting a complaint; and on 7 March 2005 Officer 1 wrote to Mr and Mrs C telling them that he had received a report from the Head who felt that their

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<sup>2</sup> The Council later said that the Deputy Head, not the Head, spoke to the class teacher.

manner at the meeting was 'unnecessarily aggressive towards her and her depute'.

46. In his written reply to this aspect of the complaint, Officer 1 said:

'I note the extensive comments you have made regarding the meeting of 3<sup>rd</sup> March with [the Head and the Deputy Head]. The view of [the Head and the Deputy Head] is that the meeting – which took place at [the Head]'s invitation – was difficult from the start due to what they felt was an unnecessarily confrontational and adversarial approach on your part which did not allow a genuine dialogue to develop. It is inevitable in such circumstances that the parties involved will have both different perceptions and recollections of what took place. [The Head and the Deputy Head] do not share your views regarding many of the statements you attribute to them and feel that what was said was misperceived or misinterpreted and I find it difficult to see how it would be objectively possible to 'prove' one person's word against another.'

*General complaint handling/record-keeping issues*

47. In pursuing their complaint with the Council following receipt of the letter of 29 April 2005, Mr and Mrs C raised a number of questions at the meeting with Officer 1 and Officer 3 on 16 May 2005. They were of the view that the original issues they had raised had not been investigated properly or with sufficient independence. They were dissatisfied with that meeting because they felt their questions had not been answered. They were also unhappy with the brief final response they received from Officer 2 on 9 June 2005 as they did not consider it demonstrated that their appeal had been investigated appropriately.

48. A further concern emerged after Mrs C obtained information under Data Protection legislation and this related to the way in which telephone conversations were logged. Mrs C has questioned, for example, when notes were written and why they were not produced at the beginning of the complaints process. She has also said that the Council have provided different responses about whether they keep telephone logs or not. Mr and Mrs C obtained copies of notes of some telephone calls made to the Department between September 2004 and March 2005. Mrs C has sent me detailed comments on these notes. She identified inaccuracies and omissions in the way the records were completed and is of the view that they show bias against her husband.

*Reporting of Mr C to his employers*

49. The additional aspect of the complaint that has arisen during the course of the investigation concerns the reporting of Mr C to his employers. Mr and Mrs C are of the view that such action by Council employees was inappropriate and was intended to intimidate them.

50. The first reporting was by the Head in relation to an incident where Mr C allegedly had dealings with School staff in his professional capacity. The police force which employs him have told me that a complaint was made verbally by the Head on 14 June 2005. There is a handwritten note by the Head recounting circumstances in and around the School which says that on 17 June 2005 she reported to a community police officer that the 'the parent harassing us' was a police officer. The Council have said to me:

'In the course of a conversation with a community police officer [the Head] indicated the basis of these concerns and the community police officer himself elected to report this for investigation. There was, accordingly, no reference by [the Head] to the police and this sequence of events cannot be any basis for the suggestion of counter complaint.'

51. The second reporting was the referral of the Violent Incident Report Forms to Mr C's employer as conveyed to Mr and Mrs C in Officer 1's letter of 24 June 2005 (see paragraph 34). Mr and Mrs C feel that the timing of this referral, three months after the forms were completed and shortly after the internal email suggesting that the situation might 'become critical', suggests that it was in some way a response to the complaints they had made, and was, in effect, an attempt to intimidate them.

52. The third reporting was a complaint made to Mr C's employer that he had used their equipment to record, without the officers' knowledge, the meeting of 16 May 2005. This complaint was made after Officer 1 learned from the Ombudsman's staff that the meeting of 16 May 2005 had been recorded. The meeting was recorded, but Mr C refuted the specific allegation made against him. For their part the Council have stated that they did not make this complaint but that it was made on Officer 1's behalf by his union.

53. None of these reports resulted in action against Mr C by his employers.

54. During the course of this investigation a number of serious allegations have been made about the integrity of the Head, Officer 1 and the Council.

Although my investigator has sought corroboration of these allegations from various parties, no corroboration has been provided.

*(a) Conclusion*

*The four original complaints*

55. I am critical of some aspects of the way these were handled by the Council.

56. Officer 1's letter of 29 April 2005 gave no indication of what steps he had taken to investigate the four complaints.

57. With regard to the first aspect, although Officer 1 did explain circumstances which gave rise to the complaint, he did not explicitly address the fact that the Head failed to officially authorise the holiday arrangements. I accept that an apology by the Head was an appropriate remedy. However, although the Head told Officer 1 that she had apologised to Mr and Mrs C, they have denied that this happened. In these circumstances it is not possible to know if Mr and Mrs C have received an appropriate apology for the admitted failings.

58. On the second matter, relating to the buddy system, I accept Officer 1's statement that the Head has authority to make such decisions. However, the complaint related also to her attitude when parents raised the issue with her and Officer 1 did not address that.

59. In relation to the complaint about access to toilets, from Officer 1's letter it appeared that interviews had only been conducted with the Head and the Deputy Head. I am also concerned that the letter reads as if evidence was taken from the class teacher by either the Head or the Deputy Head rather than by Officer 1, which would clearly compromise the independence and validity of the process. The letter does not say anything in regard to the school nurse.

60. With regard to the fourth complaint about the incident in the playground, Officer 1's letter said that 'this was broken up immediately by the classroom assistant'. It has now been accepted that this statement was wrong and that the classroom assistant did not break up the incident. The Council have argued that this error was irrelevant to Officer 1's conclusions because he was 'only investigating [the School]'s investigation of the incident', and whether the School was correct not to treat the incident as a 'criminal assault'. Having carefully

studied the original letter of complaint it is clear to me the complaint concerned the whole handling of the aftermath of the incident by the School, not just the aspects indicated by the Council. Furthermore, there was a significant error in the description of events which was easily avoidable. Although Officer 1 stated that the way in which the Deputy Head involved Mr and Mrs C's son in identifying the other child involved was appropriate, I do not consider that he gave any adequate explanation of the grounds on which he reached that view.

61. Having reviewed Officer 1's letter of 29 April 2005, I believe it did not give an adequate response to the complaints about the second, third and fourth incidents. A fuller and more accurate response, taking into account the points above, could have been given without spending a disproportionate amount of time and effort.

#### *The meeting on 3 March 2005*

62. In responding to this aspect of the complaint, the Council have noted that there are different versions of events and have said that it is often difficult to 'prove' one person's word against another. I accept this. In this instance both parties have made allegations that the other behaved aggressively, and it was entirely reasonable for Officer 1 to reach no conclusion about behaviour in this meeting.

63. It is entirely appropriate for teachers who feel they have been subject to inappropriate behaviour by parents to report such incidents, and such reports should be treated seriously (the Council has a policy on dealing with violence against staff set out in Standard Circular No. F19).

#### *General complaint handling/record-keeping issues*

64. Following the receipt of Officer 1's initial response, Mr and Mrs C raised many detailed points which concerned them about the way in which the Council handled their complaints. While it would be disproportionate to expect the Council to respond to every detailed question asked, good complaint handling does require a response to the key issues raised. There should have been a fuller response to Mr and Mrs C, whether or not this specifically answered all of their detailed questions.

65. The appeal of Officer 1's decision was considered by Officer 2 who responded in very brief terms with little information about how he conducted his review and the reasons for his conclusions. This led to a complaint about his

handling of the case and other complaints followed (see paragraph 32). The Council's response to these complaints were also brief – in some cases amounting to just one sentence.

66. Mrs C also identified what she considered to be inaccuracies, omissions and indications of bias against her husband in the telephone records held by the Council. Clearly it is important that such records are as accurate as possible. However, having studied the records, they are only brief notes made by Council officers of their understanding of what was said to them and of actions to be taken. Some of the comments are subjective but I do not consider that they are evidence of bias.

*Reporting of Mr C to his employers*

67. Mr and Mrs C consider that these were attempts by Council staff individually or the Council as an organisation to intimidate them and dissuade them from pursuing their complaints. The Council have said the sole correspondence they had with Mr C's employers was the sharing of the information contained in the Violent Incident Report Forms. The Council have also said that the reports by the Head and by Officer 1 were private matters. They justify the referral in relation to the Violent Incident Report Forms in terms of Schedule 2 to the Data Protection Act 1998.

68. It is not clear to me how that provision is relevant in this case or why, if it was felt to be, the referral was not made immediately after the meeting to which the Violent Incident Report Forms relate.

69. Regarding the Head, the Council have said that she mentioned the basis of her concerns about Mr C to the community police officer attached to the School because of a number of incidents affecting the School and its staff. Notes made by the Head say she told the community police officer that Mr C was a police officer because he had been harassing School staff. The police have told me that a complaint was made verbally by the Head.

70. I do not accept that this was an entirely private matter. The report, however made, relates to concerns the Head had as an employee of the Council and were explicitly raised with the community police officer in his role with the School. My conclusion is that the Head raised these concerns with the police when acting in her capacity as a Council official, and that this was, therefore, effectively an action of the Council.



71. The meeting on 16 May 2005 that Officer 1 and Officer 3 held with Mr and Mrs C was recorded. Officer 1 was not aware at the time that this was being done. Officer 1 only became aware of this fact in a meeting with him which formed part of this investigation. The Council have indicated to me that Officer 1 raised the matter with his union, and through them with the police. The police have said to me that they investigated a complaint about Mr C made by Officer 1. Again, I cannot accept that this is an entirely private matter. The meeting took place as part of Officer 1's duties as a Council official, and he also learned that the recording took place when we met him in his capacity as a Council officer. It is of some concern to me that facts explored with Officer 1 in the course of our investigation were shared in this way with third parties because, under the Scottish Public Services Ombudsman Act 2002 our investigations are conducted in private, and the Council knows this (it was, for example, explicitly stated in a footnote to our letter of 17 August 2007 arranging the meeting with Officer 1).

72. I have not investigated either the actions of Mr C or the Council's obligations under the Data Protection Act and do not reach any conclusions about these. I also fully accept the right of individuals to raise matters with the police and with trade unions. However, I wish to record my concern that the Council has regarded these actions of the Head and of Officer 1 as being private matters unconnected with the Council. I also wish to record my concern that it was not clearly explained to Mr C why the Violent Incident Report Forms should be released to the police under Schedule 2 of the Data Protection Act.

73. I accept that this has not been an easy complaint to handle and that matters have escalated well beyond the issues that led to the original complaints being made. It is clear that the Head felt that Mr C was acting unreasonably. It is also clear that Mr and Mrs C raised a large number of questions and complaints. However, it is the Council's responsibility to try to resolve complaints and to handle them effectively. As outlined above, I consider that there were a number of failings in the way the complaints were handled which fuelled the complaint and raised unnecessary suspicions in the minds of the complainants. I, therefore, uphold the complaint that the Council failed to properly handle complaints made by Mr and Mrs C. They could and should have done more to investigate the concerns raised and to properly explain their actions to the complainants.

*(a) Recommendations*

74. The Ombudsman recommends that the Council apologise to Mr and Mrs C for the failing identified in the handling of the complaints.

**(b) Procedures in the Department for considering complaints are biased against the complainant**

75. A central concern expressed by Mr and Mrs C is their view that the procedures in the Department for considering complaints from members of the public are biased against the complainant. They have reached this view because they consider that there is a conflict of interest in that the person in the Department who has contact with schools is also the person who considers any complaints made about schools and/or their members of staff; their experience has been that Department officials have listened to the views of the Head and not given the same consideration to the evidence produced by the complainants; and that there is no independent element to the process in that appeals are dealt with by the Director of Education, i.e. the same department about which the complaint is being made. In their case this task was delegated to an official who was line manager of the officers involved in dealing with the complaint.

76. Officer 1 and his superior are confident that education officers are capable of carrying out all their responsibilities effectively, including complaints handling. They do not accept the charge of bias or that the process is lacking in independence and loaded against the complainant. It is their view that officers responsible for schools can build up a good understanding of particular schools and the ways in which they are run and are, therefore, well placed to help deal with any problems that arise.

*(b) Conclusion*

77. In considering the different views on the procedures of the Department I have taken into account relevant principles of good complaints handling. The Scottish Public Services Ombudsman's 'Valuing Complaints' leaflet sets out the key principles involved<sup>3</sup>.

78. When complaints arise it is important to try to resolve them at source and as quickly and effectively as possible to avoid escalation. In this respect I can

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<sup>3</sup> The British and Irish Ombudsman Association (BIOA) have also developed appropriate principles (see Annex 2).

accept that there is an important role for the Department officials who work closely with a school to see if they can help resolve a complaint early. In most cases this should be possible. In this particular case, it clearly proved unsuccessful and led to concerns by the complainants that there was bias against them. However, if issues are not resolved at the informal stage and the complainants remain dissatisfied, then it is important that the next stages of the process are transparent and open and in a way that demonstrates an appropriate level of independence and impartiality.

79. In this case, during the formal stages the complaint was investigated firstly, by Officer 1, the official who was the Department's direct link with the School (who also sent Mr and Mrs C the 'warning' letter about their alleged behaviour at the meeting of 3 March 2005, and who shared information about the Violent Incident Report Forms with the police). When Mr and Mrs C appealed his decision and complained about the Department's handling of their complaints their appeal was considered by Officer 1's line manager. There was no consideration of these matters by anyone working outwith the Department that was the subject of the complaint. Nor did the formal responses give any real assurance that the actions of Officer 1 had been reasonably reviewed. I do not consider this provides a sufficient degree of independence in the process.

80. The Ombudsman has expressed similar concerns in reports on previous complaints about how the Council handled complaints about schools. In one of these reports (references W030517 and 200401927, issued January 2007) the Ombudsman commented that it should be possible for another official in a different department from the one complained about to act as the final stage of the process. This is more likely to assure complainants that there is a sufficient degree of independence in handling their appeal against the original decision. Therefore, while I do not consider that the procedures are in themselves biased against complainants, I am of the view that there is insufficient independence in the process. To that extent I uphold the complaint.

*(b) Recommendations*

81. The Ombudsman is aware that, since the time that this complaint was made, changes have been made to the Council's complaints process. However, the issue with regard to the independence of examining complaints about schools has not altered significantly. The Ombudsman recommends that the Council review their complaints process and include an independent

element in the final stage of the process for handling complaints about education.

*General observations*

82. This case has identified a more general issue of how parents can raise concerns about schools and their staff and how complaints are subsequently handled. It is important that appropriate information about complaints is made available within schools. Research by the Scottish Consumer Council (now called Consumer Focus Scotland) in their publication 'Complaints in Education' cites such lack of information as a barrier to the ability of parents to pursue complaints, and accessibility is one of the principles of good complaints handling listed in Annex 2 to this report. It would be good practice for the Department to ensure that such information is available in schools. Doing so would not impinge on the appropriate autonomy of the schools. Therefore, the Ombudsman suggests that the Council should ensure that information about how to make a complaint about a school or their staff is made available in the Council's schools.

83. I have reviewed the whole history of this investigation which was largely completed under my predecessors. It is clear that relationships between Mr and Mrs C and the Department (including the School) broke down completely. My view is that neither the Council nor Mr and Mrs C have behaved in ways which are above criticism. Serious allegations have been made about Mr C, Officer 1 and the Head which, if proven, could have had significant consequences for their employment. However, we have found no clear corroboration of any of the allegations we have looked at. The Council have suggested that they bear no responsibility for the actions of staff in reporting matters to the police, but I am satisfied those officers were acting in an official capacity. Regardless of the circumstances, the Council should handle all complaints and complainants in a fair and reasonable way and should recognise their responsibilities. In this case I have found that the Council did not do so. I realise that my findings will not satisfy either the Council or Mr and Mrs C but this report is my final view on the matter.

**Explanation of abbreviations used**

Mrs C	The complainant
Mr C	Mrs C's husband
The School	The primary school attended at the time by Mrs C's children
The Head	The head teacher of the School
The Deputy Head	The deputy head teacher of the School
The Council	North Lanarkshire Council
The Department	The Education Department of the Council
The MSP	A Member of the Scottish Parliament
Officer 1	The Council education officer responsible for the School
Officer 2	The then Head of Quality and Support Services in the Department
Officer 3	An officer in the Department

## **Principles of Good Complaints Handling**

These principles are available on the 'Valuing Complaints' website set up by the Scottish Public Services Ombudsman.

### **Accessible**

Clear, free, easily understood and available to all

### **Transparent**

Impartial, independent and auditable

### **Simple**

As few steps as necessary, minimal hand-offs and properly documented

### **Evidence based**

Driven by the facts not assumptions

### **Respectful**

Values the complaint and respects the complainant whilst managing any unacceptable behaviour

### **Authoritative**

Credible, consistent and definitive with delegated authority

### **Standards-based**

Quality, timeliness and effective communication

### **Proportionate**

Flexible in method and appropriate to the circumstances

### **Demonstrable**

Reported, open to feedback and used to drive improvement

Principles established by the British and Irish Ombudsman Association, from their publication 'Principles of Good Complaint Handling'.

**Clarity of purpose**

A clear statement of the scheme's role, intent and scope.

**Accessibility**

A service that is free, open and available to all who need it.

**Flexibility**

Procedures, which are responsive to the needs of individuals.

**Openness and transparency**

Public information, which demystifies our service.

**Proportionality**

Process and resolution that is appropriate to the complaint.

**Efficiency**

A service that strives to meet challenging standards of good administration.

**Quality outcomes**

Complaint resolution leading to positive change.