

Scottish Parliament Region: Highlands and Islands

Case 200700224: Shetland Islands Council

Summary of Investigation

Category

Local government: Education; policy and procedure

Overview

The complainant (Mrs C) complained that her daughter (Child A) had been bullied at her school (the School), and the School had not recorded the incidents of bullying clearly or managed the bullying in line with Shetland Islands Council (the Council)'s procedures. Additionally, Mrs C complained the Council failed to convene a Complaints Review Committee (CRC) to consider a further aspect of a complaint, which related in part, to the remaining issues subject to investigation.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the methods of recording and collating incidents of bullying were unclear (*upheld*);
- (b) the procedures for managing incidents of reported bullying were not adhered to (*upheld*); and
- (c) the Council failed to convene a CRC to hear Mrs C's complaints about the social work department (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) support the School in a review of their record-keeping to reflect the incidents of new bullying and episodes of continued bullying. This reporting schedule will highlight the progress being made to address new and older reported episodes of bullying within the School;
- (ii) review the School's criteria for first time/new incidents of bullying and the identification of ongoing bullying issues to be clearly set out separately to reduce the confusion and misunderstanding;
- (iii) support the School's development of appropriate contingency plans to be introduced to the policy of handling bullying when a number of incidents

are being reported by the same pupil and evidence is difficult to obtain from other children;

- (iv) ensure the local policies are adhered to and explanations are recorded within the documentation when there is a departure from the prescribed procedure;
- (v) apologise to Mrs C and Child A for the confusion caused as a result of diverting from the documented procedure;
- (vi) review their procedures and practices to ensure CRCs can be held within set timescales; and
- (vii) apologise to Mrs C for the delay in convening a CRC.

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

Main Investigation Report

Introduction

1. On 22 April 2007, the Scottish Public Services Ombudsman received a complaint from a member of the public (Mrs C) against Shetland Islands Council (the Council). She complained that the school her daughter (Child A) had attended (the School) had not recorded the incidents of bullying clearly and they had not handled Child A's reports of bullying in line with the Council's procedure. Mrs C also complained the Council failed to convene a Complaints Review Committee (CRC) to consider complaints about the social work department.

2. The complaints from Mrs C which I have investigated are that:

- (a) the methods of recording and collating incidents of bullying were unclear;
- (b) the procedures for managing incidents of reported bullying were not adhered to; and
- (c) the Council failed to convene a CRC to hear Mrs C's complaints about the social work department.

3. During the investigation into the first two heads of complaint, it became apparent there were failures in the Council's procedures for arranging a CRC which, in Mrs C's case, took 18 months to convene. As a result, I have included this aspect of Mrs C's complaint into this report.

Investigation

4. I have made several enquiries to the Council regarding the complaints that have been investigated and have received information on the first two aspects of the complaint and there has been only a small amount of information provided about the third aspect of the complaint.

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

(a) The methods of recording and collating incidents of bullying were unclear; and (b) The procedures for managing incidents of reported bullying were not adhered to

6. Mrs C raised a complaint with the Council on 26 February 2007. Mrs C complained Child A had been bullied at the School. Child A was removed from the School by her family and she moved to live with a relative away from her family home to attend another school. Mrs C felt the School's staff did not adopt the right attitude and the incidents of bullying were not resolved. Mrs C first complained to the Chief Executive of the Council on 26 February 2007 and the Council responded on 30 March 2007. The Council initially let Mrs C know the School recorded matters of bullying in line with the Council's policy. They also explained that teachers used 'professional judgement to record allegations'. The Council went on to explain that:

'allegations/episodes may carry on over several days or weeks of work.

After the initial record in the school log, all the work undertaken to record and resolve incidents of bullying is detailed and recorded in the pupil's pupil progress record.'

The pupil progress record is a record kept for each child to log progress and significant information pertinent to that child. The Council suggested this may account for why the recorded statistics had not reflected Mrs C's understanding of the statistical information made available by the School. In their letter dated 30 March 2007 to Mrs C, the Council highlighted the range of responses that had been made to Child A's reports of bullying and the strategies adopted by the School. In their view, they had appropriately used measures within the School and also made appropriate use of the local social services and the police when additional allegations were made.

7. On 4 April 2007, Mrs C wrote back to the Council in response to their letter dated 30 March 2007. On 20 April 2007 the Council wrote again to Mrs C and she subsequently referred her complaint to the Ombudsman on 22 April 2007.

8. Mrs C complained to the Ombudsman that the School had not appeared to believe Child A's reports of bullying and as a result had not handled the matter appropriately, resulting in the family's decision to remove Child A from the School and send her to another school and to live with a relative some considerable distance away from her family (see paragraph 6). Additionally, Mrs C was concerned that the published reports of incidents of bullying in the

School did not accord with her recollection of the amount of incidents Child A alone had reported and that she had noted in Child A's pupil progress record.

9. As part of this investigation, on 2 July 2007, I spoke to the Council and they agreed incidents of alleged bullying had not been recorded on the correct forms, but that details were kept in the individual pupil progress record. Within the pupil progress record for Child A, there were many recorded incidents of reported bullying and notes of interviews conducted between teachers and pupils within the School. The pupil progress record demonstrated contact between Child A, her parents, teachers, and referred to external agencies, those being: social services, the police and the Citizens Advice Bureau (initiated by Mrs C and taken up by the School). There was also written evidence in the pupil progress record of contact within and between these groups.

10. In the response letter to me dated 4 February 2008, the Council provided examples of the documentation used within the Council in respect of recording incidents of bullying within their schools. They had, at that time, a policy entitled 'Standing up to bullying in Shetland'. This provided guidance for schools to develop a local policy in line with the Council's policy.

11. The Council have indicated the bullying log held in the School recorded the incidents of bullying in date order. This contains details of every first incident and the Council indicated it would take a lot of work to redact the record in order to protect the identities of other children. I have considered that in relation to the details I required for this investigation, there was enough evidence within Child A's pupil progress record to indicate the level of incidents that were recorded (see paragraph 6) and the approach taken by the School to respond to the allegations that were made.

12. The information in the pupil progress record did not accord with the number of officially recorded incidents of reported bullying identified from within the School, those being: reported incidents of bullying between August and December 2005 as 20, with ten relating to Child A; and between January and June 2006, 12 incidents were recorded with six of those relating to Child A.

13. The School maintained contact between staff and colleagues via email and teacher meetings were undertaken to address the problems that were identified by Child A. The School's pupil progress record also recorded the concerns of investigating the reported incidents when they were not reported

straight away or through the channels identified for Child A to refer her complaints of bullying through. The School identified teacher roles and support staff roles for handling the incidents as they were reported; they also involved the local authority's education department in their consideration of the management of the ongoing issues of bullying that Child A was reporting. Additionally, they introduced peer support and additional pupil support for Child A with other children shadowing Child A between classes and in free periods and breaks. As well as this, Child A was invited to use a member of staff's classroom, set aside to receive children within the School who reported feeling vulnerable, for whatever reason, during their free time. As a part of the overall management staff regularly reported on Child A's progress within the School and looked out for other indicators of stress and disruption as a result of her reports of alleged bullying.

14. The School have agreed they did not record all of Child A's reported incidents of bullying in line with their anti-bullying policy. The policy states in Section 2.3:

'... pupil support teachers keep written records of each stage of their response to bullying.'

And in Section 3.4:

'A central bullying log is kept in the pupil support department. Incidents and follow up action are logged here.'

15. There were a lot of reported incidents of alleged bullying from Child A throughout the period, with written evidence that the School's staff had attempted to identify witnesses to the events and to gather information.

16. The Council have indicated that Child A used a range of reporting routes within the School and did not always report an incident in time for any meaningful investigation to take place. In her comment on the draft report Mrs C remarked this issue also arose because Child A was 'threatened with further violence if she did report incidents'.

17. The Council have agreed the School did not use the correct forms each time incidents of bullying were reported by Child A. The School adopted a local management approach to determine if an incident was a continuation of an earlier report of bullying or whether there were grounds to consider it was a new episode of bullying (see paragraph 6). Only new episodes of bullying were

recorded in the bullying log. In this respect, the family were unclear how incidents were being classified and what, therefore, if any, were the criteria for a reported incident of bullying being recorded as a continuation of earlier reports of bullying or a new event. This led the family to challenge the statistics based on their understanding of an official published record of the incidents of bullying in the School and information in the pupil progress record. This highlighted that not all incidents of reported bullying were being recorded for public viewing. At the same time, the assessment criteria used to determine which incident is a new incident or one that is a continuation of a previous episode of bullying was unclear.

18. The Council have indicated the School attempted to adapt their practices to suit the reports of bullying from Child A. This resulted in confusion and misunderstanding for Child A and her parents. In turn, this may have added to the family's perception that Child A was not being believed and supported within the School's environment.

19. Where the incidents have not been entered in the chronological bullying log, they have been recorded in the pupil progress record; this meant the separate incidents of potential new bullying were not recorded by the School in a way that could be effectively reported overall.

20. The Council indicated in their letter dated 4 February 2008 to me that:
'... the school services therefore accept that in such a complex case it may have been beneficial to have kept all information relating to the bullying allegations in a separate file.'

21. Mrs C complained that the School did not manage Child A's reported incidents of bullying in line with their procedures. She considered that the School were not taking Child A's reports seriously. This investigation has not considered the handling of the incidents of bullying within the School. The Scottish Public Services Ombudsman Act (2002) Schedule 4 Section 7(10) indicates matters which the Ombudsman must not investigate and includes action concerning:

'... conduct, curriculum or discipline, in any educational establishment under the management of the education authority.'

In this regard the matters of the handling of the response to bullying at the time have not been subject to investigation.

(a) *Conclusion*

22. The Council have a policy in place to support the handling of bullying within schools. However, it appears the local arrangements that were in place at the School were unclear and misleading. It is, therefore, difficult to identify the number of incidents of bullying or to understand the criteria for either a 'first time' incident or an 'ongoing incident' of bullying. This has left doubt in the credibility of the policy as there was a risk it may be misunderstood or misapplied.

23. The work done to support Child A has been recorded in the pupil progress record, which outlined the attention paid to the reports made by Child A, but has not separated out new incidents of bullying nor explained why a decision was taken to identify a reason for why any particular episode was recorded as a continuation of a previous episode of bullying.

24. In relation to having a separate bullying record established within the School, it seems the mechanisms were in place to record each incident through their local procedure. The School indicated they had a chronological record of recording each new incident rather than separate reporting schedules for each incident (see paragraph 6 and paragraph 18). This, however, made it difficult to tease out those data required to identify the needs of a specific child, such as Child A, and the use of the pupil progress record, in turn, reflected aspects of a child's experience and was recorded outside the mechanism which then formally reported on the number of cases of bullying within the School.

25. The Council have indicated that a bullying incident logging form was not completed for every incident reported by Child A (see paragraph 17). However, the Council considered that professional judgement was exercised at a local level to determine the extent to which the teacher agreed the incident to be either a new incident or a continuation of an earlier reported incident (see paragraph 6 and paragraph 19). As a result of my investigation, I uphold this complaint.

26. The Council have outlined a revised bullying reporting form which asks for more detailed information and indicates further action to be taken as a result of the incident being reported. The Ombudsman welcomes that improvement.

(a) Recommendations

27. The Ombudsman recommends that the Council:

- (i) support the School in a review of their record-keeping to reflect the incidents of new bullying and episodes of continued bullying. This reporting schedule will highlight the progress being made to address new and older reported episodes of bullying within the School;
- (ii) review the School's criteria for first time/new incidents of bullying and the identification of ongoing bullying issues to be clearly set out separately to reduce the confusion and misunderstanding; and
- (iii) support the School's development of appropriate contingency plans to be introduced to the policy of handling bullying when a number of incidents are being reported by the same pupil and evidence is difficult to obtain from other children.

(b) Conclusion

28. There was evidence of the reporting of the incidents of bullying and a number of strategies of management have been identified within the pupil progress report which demonstrates the attempts made to find evidence to support the bullying as reported by Child A during her stay at the School (see paragraph 22 and paragraph 24). However, there was a lack of evidence and witness statements to support the experience as reported by Child A. This cannot lead to a conclusion that bullying did not occur during Child A's attendance at the School, it is evidence of insufficient reported witness to the events and a lack of evidence to find any child guilty of bullying Child A.

29. There were a number of departures from the procedures for managing the incidents of reported bullying as there were a lot of incidents and the Council has indicated teachers were required to balance the ongoing needs of the day to day running of the School and the needs of Child A within that environment.

30. I have seen written evidence of a number of attempts to identify potential bullies through interview and witness statements. Though no detailed accurate evidence was found, the staff continued to try to support Child A. Whilst the School made attempts to manage the situation Child A experienced, I accept there was a departure from the procedures for recording incidents of bullying. Because of this I uphold the complaint.

(b) Recommendations

31. The Ombudsman recommends that the Council:

- (i) ensure the local policies are adhered to and explanations are recorded within the documentation when there is a departure from the prescribed procedure; and
- (ii) apologise to Mrs C and Child A for the confusion caused as a result of diverting from the documented procedure.

(c) The Council failed to convene a CRC to hear Mrs C's complaints about the social work department

32. Mrs C complained about the handling of a related incident that led to the education department reporting an incident of alleged argument between Mrs C and Child A. The social services and the police looked into the allegations made; resulting in Mrs C raising a complaint about the handling of this incident. As a result of this, Mrs C requested a CRC to be convened to look into the handling of her complaint. The Council subsequently took 18 months to convene the CRC.

33. I have not considered the actual conduct and outcome of the CRC, however, I agreed to investigate the length of time it took for the Council to convene the CRC and to consider the Council's explanation for that delay.

34. The Council are required to convene a CRC, which is required to meet and report within 56 days of written referral being made, 28 days after the response to the complaint is made.

35. Mrs C brought her additional complaint to the Ombudsman on 30 July 2007 after the Council failed to draw together the panel for the CRC. On 23 May 2008, I informed the Council that I intended to add a further head of complaint to the investigation as a result of their continued failure to convene a CRC.

36. The context for a CRC is that the 'National Health Service and Community Care Act 1990' inserted a section in the 'Social Work (Scotland) Act 1968' requiring local authorities to establish procedures for considering complaints by service users. In establishing these procedures, the Council must follow the directions contained in the 'Social Work (Representations Procedure) (Scotland) Directions 1996', which makes provision for the establishment of a review committee to process appeals.

37. I spoke with the Council over the telephone on a number of occasions and they confirmed they had not convened a CRC. They explained there were difficulties in appointing independent people with appropriate training and understanding of the process to sit on the panel of the CRC. The Council indicated they had approached a neighbouring council area to assist them in providing a suitable number of people to invite for consideration, but it was proving difficult to arrange. The Council had considerable difficulty obtaining enough nominations for a panel to convene.

38. At the time a panel was being considered, the Council were also aware of the pending local government elections, which were to possibly have an effect on the membership of the panel as there may or may not be a change of administration, which the Council indicated would mean a further set of appointments would have to be made and further training would be required for those people to be able to sit on a panel.

39. The Council were also subject to a number of enquiries in line with a Subject Access Request under the Data Protection Act 1998 requested by Mrs C. The Council had withheld privileged information as it was legal advice provided to the Council; this meant there were additional delays in considering the requirements for the CRC. The information requested by Mrs C was subsequently withheld and further to that decision being supported, arrangements were made to convene the CRC.

(c) Conclusion

40. It is the responsibility of the Council to have a supply of trained people to sit on a panel, from which they can draw. Additionally, they were aware of the approximate timing of the local government elections and this should not have been a factor influencing the arrangements required by the Council to have a supply of potential candidates for the CRCs. In view of the Council's acknowledgement of their failure to comply with the CRC procedure, I uphold the complaint.

(c) Recommendations

41. The Ombudsman recommends that the Council:

- (i) review their procedures and practices to ensure CRCs can be held within set timescales; and
- (ii) apologise to Mrs C for the delay in convening a CRC.

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

Explanation of abbreviations used

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| Mrs C | The complainant |
| The Council | Shetland Islands Council |
| Child A | Mrs C's daughter |
| The School | The school attended by Child A |
| CRC | Complaints Review Committee |

List of legislation and policies considered

Stand up to bullying in Shetland (a Council policy)

The Shetland Islands Council's Complaints Procedure

Social Work (Representations Procedure) (Scotland) Directions 1996

Scottish Public Services Ombudsman Act (2002)