

Scottish Parliament Region: Highlands and Islands

Case 200701741: Comhairle nan Eilean Siar

Summary of Investigation

Category

Local government: Education; policy and administration

Overview

Mr C complained on behalf of his son Child A. Child A was being home-educated. Mr C had asked Comhairle nan Eilean Siar (the Council) about access to exams. After discussion, it was agreed Child A could attend the nearest school (School X) for specific classes so that he could sit exams in those subjects at the end of the school year. Child A attended school but teaching staff objected. Child A was sent home. Mr C complained to the Council and was unhappy with the delay in their response and the response itself.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to honour a commitment to admit Child A to a class at School X (*upheld*);
- (b) acted unreasonably in refusing to consider enrolling Child A in individual classes (*upheld*); and
- (c) handled a complaint about these matters inadequately (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that all future responses to the Ombudsman are based on a review of the evidence available;
- (ii) put in place a policy and guidance for dealing with requests for support for home-educated children. As part of the process of creating the policy, they should consult with local teachers; the parents of home-educated children, children themselves and other local authorities. They should ensure that the policy is in line not only with the legislation but the guidance issued by the Scottish Government;

- (iii) remind all staff of the need to ensure that statements about decisions made by the Council are evidence-based and that, where advice is sought in coming to a decision, this is appropriately noted;
- (iv) undertake an audit of their complaints handling processes and procedures. This audit should be undertaken within three months of this report and be reported at quarterly intervals over the next 12 months (15 months in total) to the Ombudsman. The audit should demonstrate significant improvement over this time and show that the recommendations made in this and previous reports about complaint handling have been implemented;
- (v) ensure investigations of complaints are evidence-based; and
- (vi) apologise to Mr C and Child A separately and in full for the failings identified in this report including the events of 20 August 2007 and the distress caused.

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

Finally, the Ombudsman notes with concern that the Council's handling of complaints has now been criticised on a number of occasions (see paragraph 24 and paragraph 58) and he will be requesting an urgent meeting with the Chief Executive and the Leader of the Council to discuss his concerns and seek reassurance that Ombudsman recommendations are being implemented.

Main Investigation Report

Introduction

1. Mr C and his wife had decided to home educate their children. In early 2006, they felt that their eldest child, Child A, had achieved a standard in maths where it would be appropriate to start thinking about Scottish Qualification Authority (SQA) exams (ie, Standard Grades). Child A was then 10 years old¹. This was discussed with the nearest school (School X). Mr C and School X did not reach agreement on this and Comhairle nan Eilean Siar (the Council) became involved as the responsible local authority. On 27 March 2007, the Council wrote to Mr C and said that they would be happy for Child A to enrol in three science subjects. They also said that they would arrange for Child A to sit relevant exams as an external candidate.

2. Child A attended at School X on 20 August 2007. However, he was not allowed to enter a classroom. Mr C was told that staff had refused to accept Child A. On 26 November 2007, the Council said that Child A could not be enrolled. They had no legal obligation to do so but had sought to negotiate support for Child A. However, they had been unable to agree with staff how this might work. Mr C was told if he disagreed with the decision he could seek advocacy support or mediation.

3. Mr C complained to the Council and contacted the Ombudsman to assist. There was confusion over whether the Council's complaint process had been completed (see paragraph 55) and on 3 June 2008, I² wrote to the Council to confirm that an investigation would begin.

4. The complaints from Mr C³ which I have investigated are that the Council:

- (a) failed to honour a commitment to admit Child A to a class at School X;
- (b) acted unreasonably in refusing to consider enrolling Child A in individual classes; and
- (c) handled a complaint about these matters inadequately.

¹ Child A became 10 years old in the middle of 2006.

² More than one complaints investigator was involved with this complaint. For ease of understanding, this report reads as if only one investigator undertook all the actions.

³ Permission was sought and obtained from Child A to pursue this complaint.

5. In their response to Mr C's complaint dated 6 March 2008, the Council had upheld the complaint under heading 'a'. However, no apology was made to Mr C or Child A or any indication given of whether action had been taken to ensure this would not happen again. When I decided to consider Mr C's complaint before it completed the Council's own process, I asked the Council to comment on this complaint. The response said that 'no formal commitment had been made'. The response also said that it was difficult for the staff to have confidence that they could meet Child A's needs because of the position taken by Mr C. Given that this response appeared to contradict their original decision and the fact that no action appeared to have been taken to remedy the fault that had been originally accepted, I have fully investigated heading 'a'.

Investigation

6. In investigating this complaint, I obtained copies of relevant documents and guidance; and made written enquiries. There were significant delays in the Council responding to my request for information and I refer to this under heading 'c' below.

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

Legislative and Policy Background

8. The Scottish Public Services Ombudsman Act 2002, schedule 4, paragraph 10 says that the Ombudsman must not investigate the giving of instruction and conduct, or curriculum and discipline in any educational establishment under the management of an education authority. This investigation has, therefore, been limited to considering matters surrounding the decisions made by the Council.

9. The responsibility for ensuring that a child's education is 'efficient' lies with parents (s 30 of the Education (Scotland) Act 1980 (the Legislation). Most parents fulfil this responsibility by sending their children to school. However, some parents choose to do so by educating their children at home. The local education authority must take action only if they feel that an efficient education

is not being provided (s 37). In 2004, the Scottish Executive⁴ issued guidance titled 'the Circumstances in which Parents May Choose to Educate their Children at Home' (the Guidance).⁵ The following extracts are from the sections on recognised qualifications, paragraphs 4.8 to 4.9:

'There is no legal requirement for children to take a particular set of qualifications. The internal assessment component of many qualifications such as Standard Grades, National Qualifications, and GCSEs can restrict the certification of external candidates ... These are not, however, the only qualifications which external candidates can take, and authorities should offer parents and their children information about alternative qualifications.'

'Authorities are not required to meet any costs associated with external candidates taking examinations or other qualifications. Authorities are, however, expected to take a reasonable approach and make available any resources or support that they can offer.'

10. The Council has its own complaints procedure. This says that complaints will be acknowledged in three days and a full response given in 21 days. If this timescale is not possible, complainants will be informed of this.

(a) The Council failed to honour a commitment to admit Child A to a class at School X

11. Mr C was in contact with School X from some time in 2006⁶. Child A, although only 10 years old, had achieved a good level of maths proficiency and Mr C was seeking to see whether he would be able to sit exams for qualifications issued by the SQA (Standard Grades). A letter of 1 October 2006 from Mr C to the Head Teacher of School X showed there had been contact about this. The letter referred to the loan of past papers and asked for advice on how the question of continuous assessment could be resolved. Mr C asked whether he should contact the local education authority and asked for contacts. Mr C also said he and his family had experienced discrimination while living on the island, which precluded his sending his children to School X.

⁴ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

⁵ Since amended; the 2004 version was in force at the time of the events described in this complaint.

⁶ There were considerable gaps in the documentation provided by the Council, this included anything prior to February 2007. Any evidence prior to this was provided solely by Mr C.

12. Emails from January 2007 show Mr C was then also in contact with the Principal Maths Teacher (Teacher 1). Mr C had sought contact with a maths teacher to discuss what level of examination would be suitable for Child A but was also seeking an explanation about the continuing assessment part of the qualification and whether they could assist. On 22/23 January 2007, Teacher 1 said they were seeking the advice of specialists and would respond within seven working days. An email of 31 January 2007 informed Mr C that School X had decided that the matter would be dealt with by a Depute Head Teacher (Teacher 2). Mr C understood Teacher 2 was a primary specialist and asked Teacher 1 whether Teacher 2 would be able to assist with the continuous assessment request for maths.

13. A meeting was held with Teacher 2 and a minute passed to a Council officer (Officer 1).⁷ Officer 1 was involved in learning support for the local area and had offered to find out what happened elsewhere in the Council area. On 14 February 2007, Mr C wrote to Teacher 2 and said the Head Teacher had promised contact with relevant teachers. He said that these meetings would only take about ten minutes and were essential if any continuous assessment work were to be in the correct format. He said he felt that it appeared the Head Teacher no longer wished to take part in constructive dialogue.

14. Officer 1 wrote to Mr C on 20 February 2007, she said that the SQA did not issue advice on home-education but that it was the responsibility of the presenting school to decide whether a child should be entered as an external candidate and whether arrangements should be put in place to complete the assessed course component. She also said she had had advice from an SQA co-ordinator at another school in the area that, unless there was continuing assessment, an appeal was difficult and suggested an exam board which did not have an assessed component may be more appropriate. Officer 1 also said that the guidance provided by the Scottish Executive stated that the assessment component restricted the choice available to home-educators and recommended alternative qualifications.

15. On 25 February 2007, Mr C wrote to Officer 1 saying her letter had not addressed the question about how to obtain access to continuous assessment

⁷ Officer 1 refers to this minute in correspondence and says she has received a copy. However, this was not made available with the documentation provided by the Council.

and indicated he would approach the Scottish Ministers. On 27 February 2007, Officer 1 suggested Mr C contact one of two named officers in the Council. Mr C contacted one of these officers (Officer 2) on 28 February 2007. Mr C contacted a number of Council officers over the next few weeks, with no apparent response, until a letter of 27 March 2007 (see paragraph 1) from Officer 2 stated that he could not authorise School X to undertake continuous assessment. He said that this occurred in a broader context and it was not appropriate to expect staff to undertake this work separately from their responsibility to educate a young person. Officer 2, however, also said that he would be happy for Child A to enrol in three named subjects in fourth year (Physics, Chemistry and Biology) and that the Council would arrange for Child A to sit relevant exams as an external candidate. Officer 2 said any further requests for assistance should be directed to the Head Teacher in the first instance.

16. On receipt of this letter, Mr C emailed Officer 2 and asked to meet. He said that he understood some of the issues around continuing assessment but that he was having continuing difficulties with School X. He asked for the forms which would allow him to make an official complaint against the Head Teacher and Teacher 1. On 21 May 2007 Mr C wrote to Officer 2 asking him to mediate in the matter of Child A's enrolment in the three named classes. A note on the file indicates that someone from the Council had spoken to the Head Teacher about this but no details were given.

17. On 17 August, at which point the school term had begun, Mr C sent an email to the Head Teacher which mentioned logistical problems with the first few days which had meant Child A had not attended and asked for details of the timetable. Child A attended School X on 20 August 2007. At about 14:30, Mr C emailed Officer 2 to say Child A had been sent home. He said he understood this was because of 'dissent' by some teachers. Later that day, Mr C emailed again to say he had spoken to the Head Teacher who had said an individual member of staff had objected to teaching Child A. Mr C said that this individual was known to be prejudiced towards the family. A subsequent email from Mr C asked if the detailed reasons for this person's objections could be forwarded as the Head Teacher refused to discuss this. Mr C wrote again on 22 August 2007 to Officer 2 to ask whether Child A was to attend that day and again on 23 August 2007. A video conference was held on 24 August 2007. This appears to have been between Officer 2 and members of staff but no note was taken of this meeting or any decisions made.

18. Despite the absence of any note of that meeting, it appears from other evidence that the Council were still seeking to help Child A enrol part-time at this point. On 27 August Mr C wrote to Officer 2 thanking him for his help and asking when Child A could sit aptitude tests. On 5 September 2007, Mr C wrote again asking for an update on when Child A would sit an 'assessment' examination. A letter from the Scottish Government to Mr C dated 28 September 2007 said that they had been in contact with Officer 2 who had advised them that he hoped that, when he heard from the union, he would be in touch shortly to make arrangements for a pre-assessment to be undertaken.

19. However, on 26 November 2007, Officer 2 wrote to Mr C to say that Child A would not be able to have a part-time placement at School X. Officer 2 said that he had sought to negotiate support for Child A and was sympathetic. However, he had been 'unable to agree with staff how this might work and am therefore unable to agree to your request'.

20. An internal Council report into Mr C's subsequent complaint completed in February 2008 said that the Head Teacher had agreed to Child A attending classes but had not fully consulted with staff as he had not expected opposition. He said staff had said they would not allow Child A into the class until they had discussed this with their union. The report stated, 'this was a reversal in policy by the school'. The response to Mr C's complaint by the Council, dated 6 March 2008, said that it was 'clearly inappropriate that you be told that such a service was available only for it to be withdrawn shortly before it was due to commence' and that the Head Teacher 'acceding to your request prior to consulting with staff resulted in disappointment to yourself and [Child A]'.

21. In response to my initial questions, Officer 2 said that it was 'regrettable' that Mr C found himself in the position where he attended school with Child A. However that 'while [the Head Teacher] said he would attempt to accede to [Mr C]'s request, no formal commitment was made'. I asked the Council to confirm their understanding of the events on the day Child A was sent home from School X. Officer 2 said that he understood that 'between my letter of 27 March and 15 August 2007⁸, [the Head Teacher] had a number of discussions with staff in relation to support for [Child A] and the ability of the

⁸ The events did occur on 20 August 2007. I had used 15 August in error in an email requesting further information. Apologies for this were made to both Mr C and the Council.

school to provide what was requested. It is unfortunate that [the Head Teacher] did not contact the parents prior to 15 August 2007 to advise him of his decision.'

(a) Conclusion

22. Mr C has chosen, as he is entitled to do, to educate his child (Child A) at home. The Council were under no legal obligation to provide support for Child A. However, the Guidance then in place stated that they should seek to do so where possible. Once it became clear that it would be difficult to allow Child A to submit work for the continuous assessment aspect of the examinations, it was reasonable for the Council to make the suggestion that Child A enrol part-time at School X. This did not prove possible because of objections by staff. I deal in more detail with this under heading 'b'.

23. In their response to my questions, the Council have accepted that the situation was 'regrettable' but said that no formal commitment to admit Child A to classes at School X was made.

24. I am unable to read the letter to Mr C dated 27 March 2007 (see paragraph 15) as anything other than such a commitment. The result being that Child A attended School X in uniform on 20 August 2007 but was sent home. Recent statements by Officer 2 to the Ombudsman's office appear to suggest that discussions had taken place prior to this and it was unfortunate that the Head Teacher had not informed Child A and Mr C of the decision that Child A could not attend. This is not reflected in any of the evidence I have seen. The Council's own internal investigation of February 2008 refers to a 'reversal of policy' and staff 'not being fully consulted'. In their original response to Mr C, they upheld this complaint in full but neither apologised nor indicated any action taken. On this point I refer to the recommendation in my previous report 200503386, published in July 2007 and accepted in full by the Council. This recommendation said that 'the Council should emphasise in guidance to relevant staff that when faults have been identified consideration is given to making an appropriate apology and information given of any action taken to improve Council process and procedures as a result of their complaint'. I deal with this under heading 'c' and recommendation (i).

25. Given the terms of the letter of 27 March 2007, I fully uphold this complaint. I am also concerned about the discrepancy between statements made to the Ombudsman's office (see paragraph 21) and the complaint

response to Mr C, which is supported by the evidence made available to me in the paperwork about the events around 20 August 2007 (see paragraph 20). It is important that statements made to the Ombudsman as part of the complaints process are based on the evidence available.

26. The Ombudsman, therefore, makes the following recommendation.

(a) Recommendation

27. The Ombudsman recommends that the Council ensure that all future responses to the Ombudsman are based on a review of the evidence available.

(b) The Council acted unreasonably in refusing to consider enrolling Child A in individual classes

28. I have found that the Council did make an initial commitment to enrol Child A in individual classes. This complaint, therefore, deals with the subsequent decision, which was set out in Officer 2's letter of 26 November 2007 (see paragraph 19). As stated in paragraph 8, it is not the SPSO's role to review the decision from an educational perspective. However, I have considered whether proper procedures and processes were followed and, in this context, whether adequate reasons were given.

29. The letter of 26 November 2007 was very short. It stated that it had not been possible to obtain the support of teachers but restated that the Council had been sympathetic to Mr C's position. Mr C was advised of the details of local advocacy support and mediation. There is limited evidence of any direct contact with Mr C over the period between August 2007 and November 2007.

30. A letter from School X's union representative (Teacher 3),⁹ dated 10 September 2007 but noted as received at the Council on 7 November 2007, said that union members at School X had had a lengthy meeting on the matter and had unanimously decided not to co-operate voluntarily with the request for Child A to be placed in a fourth year physics class. The letter said that there was no sound educational reason for granting a request to admit a child of primary school age whose ability, aptitude and maturity were unknown and that, given prelim exams were due in December for a formal exam in May 2008, this could only be detrimental to current pupils. The letter also pointed out that a

⁹ Teacher 3 had previously been named as an individual who had exhibited prejudice towards his family.

similar request made for maths in the previous year had been denied. Teacher 3 also said that the Council had had a year to develop a policy to deal with such requests and had failed to do so. She suggested that this recent request be a 'spur to action'.

31. The internal Council report by another officer (Officer 3) on Mr C's complaint said that Teacher 3 had called in the union because concerns had been raised by staff. Direct reference is made to the 'union's stance on home educated pupils'. Officer 3 said in the report that this position was corroborated by Officer 2 and there had clearly been contact with the union. It was further stated in the report that the Head Teacher could not 'order staff to carry out duties which are in contravention to working agreements and current legislation'. It appeared from the report that this was based on a statement made by Teacher 3 but this was not clear. There appeared to be no further evidence to corroborate this statement or the stance on home-educated pupils attributed to the union.

32. In the report, Officer 3 detailed some of Mr C's concerns about staff attitude exhibited to his family and wider problems of prejudice which Mr C said he had experienced while living in the area. Mr C was said to have offered to provide police incident numbers and to have been supported in his allegations on the wider incidents by a witness who was present. This witness was a teacher who also taught classes at School X.

33. The report said that it was Officer 3's impression that relationships with the Head Teacher and Mr C and Teacher 1 and Mr C had become strained and this was the reason for Teacher 2's involvement. Teacher 1 was noted to have kept a diary of contact with Mr C. It was not clear from the report that Officer 3 had seen this. However, Officer 3 said there was nothing to substantiate Mr C's complaint that Teacher 1 had been rude or derisory to him.

34. The report considered contact with Mr C. It noted there was a 'gap in the timeline' between August 2007 and November 2007. The reason for this was that Officer 2 was engaging with the union. The Head Teacher was also noted to have said there was a delay because of the union intervention and in the intervening period he had been attempting to 'pacify' Mr C.

35. In the letter of response to his complaint from the Council dated 6 March 2008, Mr C was told by the Council that, as he had raised concerns

about staff attitude towards his family but provided no substantive evidence, it was reasonable to consult with staff as 'without goodwill on the part of all, this history could not be ignored and was of concern to staff'. The letter stated that the diary produced by Teacher 1 had been reviewed and that there was evidence of email and telephone contact between Mr C and Officer 2 until the decision was reached in November 2007.

36. Given the Council had originally been supportive, I initially sought to resolve this complaint and, on 8 August 2008, wrote to the Council to ask if there was any way that Child A could enrol in individual classes. On 21 August 2008, Officer 2 said that they had 'reservations in principle' to part-time education and, in particular, to the age difference between Child A and that of the classes requested. I asked for further information about 'reservations in principle.' I also asked if they now had a general policy in place; what advice they had from external agencies; about the detail of their contact with the union; and what legal advice they had had. Officer 2 said the Council supported a number of children who were home-educated and issues had arisen surrounding what resource and support they should provide. These had been tested at adjudication. No information was given about the adjudications or their relevance to this point. Officer 2 said that the Council were of the view that they were limited in the support they were required to provide by legislation and that there was no obligation to provide public exam systems. Officer 2 said he had been in contact with the SQA, a home-education advisory body and a Further Education College but no note had been taken of advice given. He provided a copy of the letter from Teacher 3 (see paragraph 30) and said there had been more contact with the union but, again, there was no evidence of this or detail given of who in the union had been contacted or what the discussions had been about.

37. I also asked the Council about their view of their obligations in light of not only the Legislation but also the Guidance. Officer 2 said advice had been sought from the legal department and this was consistent with advice from other agencies. No further details were provided.

38. In the course of the investigation, I was informed that the solution originally proposed by Officer 2 in his letter of 27 March 2007 was in place in other Councils. The Council advised they could not comment on the provision made in other local authorities.

(b) Conclusion

39. There are two parts to consider in relation to this complaint. The process taken in reaching this decision and the reasons given for this.

40. The Council have not provided me with details of any policy on the support they provide to home-educated pupils; how they deal with requests for support; or the age at which a child should be able to sit an exam. There was, therefore, no formal process or policy in place to deal with Mr C's request for assistance to help Child A access exams. I have considered whether the actual process undertaken was reasonable.

41. Councils do have to deal with requests for which they have no precedent or policy in place. In doing so, they should have regard to the relevant legislation, guidance and general principles of good administrative practice. Following the problems on 20 August 2007, Officer 2 appears to have taken the lead in trying to resolve the issue. There is evidence that until late September 2007, the Council still supported Child A's enrolment in individual classes but were seeking the support of staff. I am basing this assumption on the emails from Mr C and the letter from the Scottish Government referring to an 'assessment'. In the letter of 26 November 2007, Officer 2 says that 'he has been unable to agree with staff how this might work'. It should be assumed that the process, therefore, consisted of attempts to gain agreement and that, as part of this, someone had suggested an assessment. The letter also refers to the Council's legal obligations, so it should also be assumed that consideration of this was part of the process. The report into Mr C's complaint by the Council refers to Officer 2's 'active engagement' with the union. It also says that it appears the union's refusal was supported by current legislation but no direct reference made to the legislation or the points made by the union that it supported. No reference is made to the Guidance, which encourages support.

42. In considering the evidence of the process which was undertaken, I have noted that the only evidence of contact with staff and the union on the part of Officer 2 or any other Council officer is one letter and an unminuted video conference. Officer 2 has also referred to additional unnoted contact; contact with external agencies and legal advice that was taken as part of this process. However, there was no note of most of this contact available (see paragraph 36), which meant it could not be established how any of this related to the decision made. From the evidence I have seen, there was very limited contact with Mr C between August 2007 and November 2007, when Mr C was

told that the arrangement originally proposed was not possible because staff had not agreed to it. Mr C was informed at this stage that mediation would be possible but it is clear the decision had been made so it is not obvious why this was proposed at this stage and not earlier. There is no record that information or evidence was sought from Mr C to help with the discussions, despite the fact it appears the concerns raised by the union were about Child A's ability to cope. It is not clear who suggested the assessment or why this was not followed up. No contact was made with Child A.

43. In summary, the only mention of the process taken to make the decision in the letter of November 2007 is to attempt to secure agreement of the staff. However, there is limited evidence of this. There was no attempt to involve Mr C or Child A in the process leading up to the decision of November 2007 despite the fact that, as the letter indicates, mediation may have been an option. Officer 2 has said that the process included seeking advice, both legal advice and from external agencies. There is no evidence as to why this was sought or how that related to the decision. I have, therefore, concluded that it cannot be demonstrated that the process was appropriate to the decision being made.

44. I turn now to the reasons given for the decision. From the letter of November 2007, it seems that the Council still supported the enrolment of Child A as a part-time pupil but that they had been 'unable to agree with staff how this might work'. It is not clear what this means. The only evidence of the position of staff was the letter by Teacher 3, which stated they would not co-operate because of concerns about the age of Child A, his ability to cope and the effect on other pupils. There is no evidence that contact with the union was sought at a higher level. There is reference in the report by Officer 3 to 'the union's stance on home educated pupils' and that staff could not be asked to carry out duties in 'contravention to working agreements', which may refer to statements by Teacher 3, but there is no detail given on this and there is no evidence any of this was communicated to the Council prior to November 2007. The specific concerns of the union were not communicated to Mr C who was, therefore, unable to respond to them.

45. I accept that it may be difficult to support home-educated pupils through continuous assessment programmes. The Council have also now decided that their initial solution of part-time attendance is not appropriate in principle. However, the reasons they have given both to the Ombudsman's office (see paragraph 36) and to Mr C (see paragraph 35) are contradictory. Reference is

made to legal advice and to contact with the unions and with others. In response to a draft of this report, the Council did provide a handwritten note of external legal advice (this document was difficult to read) and an email from their own legal team providing advice. This email had been sent on 13 November 2007 and set out the facts, including the problems with the union. It said that there was no reason in theory why this flexible approach to schooling should not be considered; and 'on the face of it, it should be a relatively straightforward matter of the Education Authority considering a request on its merits'.

46. I had requested all internal correspondence relating to Mr C's complaint on 24 October 2008. On 28 April 2009, I asked if the Council could confirm if advice was sought and what had been given. I am critical that this information was only provided in response to the draft report. However, I have considered these documents carefully. The Council have repeatedly said they have no obligation to provide Child A access to specific classes but it is clear from the advice given that they were not legally prevented from doing so and in responding to Mr C's request they were exercising their discretion not to pursue the arrangement originally suggested. Given this, they should have ensured that reasons for that discretionary decision were clearly and well documented.

47. It is clear that staff were unhappy with the decision to enrol Child A. The only evidence of the concerns raised by staff are the reasons given by the union. These relate solely to Child A's age and his ability to cope. There is no reference to the concerns about prejudice raised by Mr C. Yet the Council have said to Mr C that this was the key reason why staff needed to be consulted (see paragraph 35). Despite some initial reference to an assessment, no real attempt appears to have been made to deal with these concerns or to involve Mr C in the negotiations. The letter from the union also only refers to a physics class when the Council had agreed to enrol Child A in three classes. It is not possible to say where this error originated, given that there is no evidence of what information was provided to the union. I have noted the comments by Teacher 3, who suggested that a policy would be appropriate in 2007. Given the failure to provide coherent reasons or evidence of advice taken on which the decision was made, I uphold this complaint.

48. While this complaint is upheld in full, on the basis of the failure of the Council to have undertaken a suitable process; or to have clear reasoning for their decision or evidence of some of the assertions made surrounding the

decision, I am unable to make any comment on matters relating to the appropriateness of educating Child A in the manner suggested. However, given both the concerns of their own staff (see paragraph 30) and the acceptance that they have a number of home-educated pupils and have had adjudications in relation to support provided, the Ombudsman recommends that they consider putting a formal policy in place which will cover such requests and how they should be processed in the future.

(b) Recommendations

49. The Ombudsman recommends that the Council:

- (i) put in place a policy and guidance for dealing with requests for support for home-educated children. As part of the process of creating the policy, they should consult with local teachers; the parents of home-educated children, children themselves and other local authorities. They should ensure that the policy is in line not only with the legislation but the guidance issued by the Scottish Government; and
- (ii) remind all staff of the need to ensure that statements about decisions made by the Council are evidence-based and that, where advice is sought in coming to a decision, this is appropriately noted.

(c) The Council handled a complaint about these matters inadequately

50. Mr C's first attempt to complain was made in April 2007 (see paragraph 16), when he raised concerns about named teachers at School X. No information appeared to have been given and Mr C did not pursue this. On 12 October 2007 a formal complaint was submitted. This was acknowledged by the Council on 17 October 2007. There was some confusion about whether an email had been deleted but, on 19 October 2007, the Council confirmed that the email had been received.

51. On 26 November 2007, the Council's Director of Education (the Director) sent a letter to Mr C which referred to difficulties with email correspondence and access problems, which meant that they were unsure about the terms of his complaint. A complaint form was enclosed. A detailed complaint was sent by Mr C on 10 December 2007. On 19 December 2007, the Director wrote a very brief letter of acknowledgement which stated that complaint 1 was accepted but not complaints 2 to 5. Mr C was told these were not specific enough. However, no further information or advice was given about what would be required. On 19 December 2007 Mr C submitted a revised version and on 25 December 2007, a summary of this. There was very little difference between

complaint 5 in all three versions. An allegation against Teacher 3 was withdrawn and other complaints were split into 'a' and 'b'. A minor change to complaint 3 was made, asking for clarification of the legal position of certain actions. Complaint 4 was summarised from the original complaint. Complaint 2 was more significantly altered.

52. The Director considered this was now sufficient and on 25 January 2008 wrote to Mr C to confirm that his complaints would be dealt with. On 31 January 2008, the Director named Officer 3 as the officer who would undertake this investigation. Mr C was concerned about a meeting which was proposed with Officer 3 and on 1 February 2008 he was advised by the Director that it was standard practice to offer such a meeting and it would not be appropriate to meet with a member of the Chief Executive's office at that stage.

53. The report by Officer 3 has been referred to throughout this report. It consisted of the summary of interviews with Mr C, individuals supporting him and staff. It is not clear from the report whether the interviews of staff were undertaken separately or all staff interviewed together. No notes were kept of the interviews apart from the report. I have commented elsewhere on the lack of evidence to substantiate some statements made both in this report and in the letter subsequently based on this. In the letter, the first complaint was upheld but no apology given or any indication of action taken as a result of this.

54. Mr C had first contacted the Ombudsman in September 2007, when he was beginning the complaint process. He was advised to complete the process before contacting the office. However, Mr C was concerned about progress and, as a result, I was in regular contact with the Council from November 2007 asking about the process of his complaint.

55. On 8 April 2008, Mr C called to say he was unsure where his complaint was in the Council's process, I contacted the Council and was informed that Mr C had completed the process. I told Mr C if he wished to write to the Ombudsman's office, he could. Mr C contacted me on 1 May 2008 to say that he was having difficulty obtaining information relevant to his complaint from the Council, who had told him that the complaint was ongoing. I wrote to the Council on 1 May 2008 asking for confirmation of the position. On 21 May 2008, confirmation was received by telephone that Mr C had not completed the full process. I asked the Council to put this in writing. Given the delays in the first stage response and the confusion about the end of the

process, I decided to exercise my discretion and investigate this complaint early. On 3 June 2008, I wrote to say that I would proceed to investigate this matter.

56. During the course of my investigation, there was also delay in responding to requests from the Ombudsman's office. On one occasion, the response to me was due on 15 November 2008, I was in contact several times in November and December 2008 chasing this response and the documents were not sent until 16 December 2008. I was told this was because a similar request had been made by the Scottish Government. I asked for details of this but none were provided until the draft report had been issued when I was informed that documents had been sent in error to the Scottish Government on 5 November 2008.

(c) Conclusion

57. I have no hesitation in upholding this complaint. No explanation was given for the delays to Mr C. An explanation for one delay was given to the Ombudsman's office but not in detail until after the draft report was issued. The investigation of Mr C's complaint involved interviewing staff and a report was made. However, I am concerned that the letter based on this report and the report itself makes assertions which cannot be evidenced or which appear contradictory to other statements. I have dealt with this in more detail under heading 'b'. In addition, the subsequent response to the questions I raised about the policy and position of the Council (see paragraph 45) also contradicted previous evidence and did not appear to be based on the evidence available, despite there being a considerable delay (four weeks) in the response to the Ombudsman's office.

58. In making recommendations, I have had to take into account recommendations made in previous investigations. The Ombudsman has made recommendations on a number of occasions to the Council about delay in responding to correspondence and complaints, as well as detailed concerns about complaint handling¹⁰. Notably, in June 2006 (200501381), the Council accepted the recommendation that staff be informed of their own policy that correspondence be replied to within defined time limits. The delays experienced by both Mr C and the Ombudsman's office in receiving responses suggests that the situation has not improved. In September 2008, the Council

¹⁰ See reports 200501381, 200701164, 2005003386 and 200502985

agreed to ensure complainants were provided with a formal explanation if the response to a complaint will take longer than the stated timescales. While that recommendation was made after the points raised here, it was noticeable that no explanation was provided for the delays in responding to the Ombudsman's office and considerable time was spent chasing these responses. In the circumstances, the Ombudsman makes the following recommendations.

(c) Recommendations

59. The Ombudsman recommends that the Council:

- (i) undertake an audit of their complaints handling processes and procedures. This audit should be undertaken within three months of this report and be reported at quarterly intervals over the next 12 months (15 months in total) to the Ombudsman. The audit should demonstrate significant improvement over this time and show that the recommendations made in this and previous reports about complaint handling have been implemented;
- (ii) ensure investigations of complaints are evidence-based; and
- (iii) apologise to Mr C and Child A separately and in full for the failings identified in this report.

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

61. Finally, the Ombudsman notes with concern that the Council's handling of complaints has now been criticised on a number of occasions (see paragraph 24 and paragraph 58) and he will be requesting an urgent meeting with the Chief Executive and the Leader of the Council to discuss his concerns and seek reassurance that Ombudsman recommendations are being implemented.

Explanation of abbreviations used

Mr C	The complainant
Child A	The aggrieved
The Council	Comhairle nan Eilean Siar
School X	The school Child A tried to attend in 2007
Officer 1	The officer initially involved with School X and Mr C
Officer 2	The officer in the education department who dealt with Mr C
Officer 3	The officer responsible for the investigation report on Mr C's complaint
Teacher 1	A maths teacher at School X
Teacher 2	A depute head teacher at School X
Teacher 3	The union representative at School X
The Director	The Council's Director of Education
SQA	Scottish Qualification Authority
The Guidance	Circumstances in which Parents May Choose to Educate their Children at Home – issued by the Scottish Government in 2004
The Legislation	The Education (Scotland) Act 1980

List of legislation and policies considered

The Education (Scotland) act 1980

Circumstances in which Parents May Choose to Educate their Children at Home

The Council's complaint procedure

