

Case 200400116: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Education, Handling of complaints

Overview

The complainants, the parents of a young daughter, raised a number of issues about her pre-school education and about how their complaints about these issues had been handled by the City of Edinburgh Council.

Specific complaint and conclusion

The complaint which has been investigated is that the Council did not properly handle Mr C and Ms C's complaints (*upheld*).

Redress and recommendations

The Ombudsman recommended that the Council:

- (i) apologise for failing to handle the complaints properly;
- (ii) review the implementation of their complaints procedure to ensure that complaints are fully considered locally unless there are exceptional circumstances; and
- (iii) take steps to ensure that they clarify to complainants when the local process is complete.

The Council responded that the Director of Children and Families accepted that there were failings and that they were prepared to apologise. The Director confirmed that he had instructed a major review of his Department's complaints handling procedures.

Main Investigation Report

Introduction

1. The complainants, (Mr C and Ms C), have a young daughter (Miss C) with a medical condition. She was referred to an Educational Psychologist and first attended a children's centre part time in 2003.

2. Mr C and Ms C raised complaints about members of staff in what was then the Education Service, about discrimination against their daughter, about the record-keeping at the Centre and about the way the Council handled their complaints.

3. Section 8 and Schedule 4, Paragraphs 8 and 10 of the Scottish Public Services Ombudsman Act 2002 prevent the Ombudsman from investigating matters concerning action taken in respect of personnel matters and also (a) the giving of instruction, whether secular or religious; or (b) conduct, curriculum or discipline in any educational establishment under the management of an education authority. However, in terms of Section 8(3), nothing in Schedule 4 prevents the Ombudsman conducting an investigation in respect of action taken by a listed authority in operating a procedure established to examine complaints or review decisions.

4. The complaint from Mr C and Ms C which I have investigated is that the Council did not properly handle Mr C and Ms C's complaints.

5. Mr and Ms C made a concurrent complaint to the Scottish Commission for the Regulation of Care (the Care Commission) about aspects of Miss C's care when she attended the Centre.

Investigation

6. The investigation is based on correspondence provided by Mr and Ms C and the Council's response to my enquiry. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Only limited reference is made to issues referred to and investigated by the Care Commission. Mr and Ms C and the Council were given an opportunity to comment on a draft of this report.

7. The Council's procedures for handling education service complaints is set out in a booklet entitled How to Make the Most of the Education Service first published in October 2002 and reprinted in January 2004. The booklet anticipates that most complaints will be resolved locally with the staff of the particular service. Should attempts to settle the complaint prove unsuccessful, a complaint can be taken to the Education Service's Advice and Conciliation Service (ACS). Complainants are invited to discuss their complaint with ACS staff. The matter will then be investigated. A full reply is promised, that will explain the conclusion(s) reached, the reasons for it, and details of any action taken or proposed. No further stage of internal consideration is detailed. Complainants are advised that if they do not consider their complaints have been properly administered by the Education Service then they have the right to submit their complaint to the Ombudsman.

8. Miss C was born in December 1999. She has a medical condition for which she was referred to an Educational Psychologist and, following her intervention, a part-time place was found for Miss C at a Council children's centre. In May 2003, an Individualised Education Programme (IEP) was devised for Miss C and a place was offered for her at another centre for under fives (the Centre) commencing in August 2003.

9. Miss C entered the Centre in August 2003. According to Mr C and Ms C their daughter had a good relationship and flourished with her first Learning Assistant (Officer 1) who had followed her daughter's IEP. On 15 October 2003 a pre-school Special Education Needs assessment was completed by an Educational Psychologist.

10. In December 2003 another Learning Assistant (Officer 2) took over from Officer 1. A number of problems arose initially because, Ms C insists, Officer 2 did not adhere to the IEP or to nursery procedures. (These issues, which related to matters of instruction and discipline and Officer 2's behaviour, were later detailed at length in a letter of 6 April 2004 to the Manager of the Centre (the Manager) and in significant part were the subject of a reference to the Care Commission on 20 April 2004.)

11. Ms C telephoned the Manager on 22 January 2004 and detailed her concerns about Officer 2.

12. On 23 January 2004 Mr C and Ms C both attended the Centre. They first discussed matters with Officer 2. Later that morning Mr and Ms C met with Officer 2's line manager. Following this meeting, Mr and Ms C withdrew their daughter from the Centre because of their unhappiness with Officer 2.

13. According to the Council, the Manager undertook to discuss the issue with the Education Department's Personnel Section the following week. The advice given was that there were insufficient grounds for replacing Officer 2. The Support Co-ordinator confirmed to the Centre Manager that she understood that Miss C would not be returning to the Centre and that her parents had applied to another nursery school.

14. During February 2004, Ms C had two telephone conversations with an officer in the Education Service's Advice and Conciliation Service (Officer 3). Ms C alleged Officer 3 adopted a rude tone with her and was unhelpful.

15. On 1 March 2004 Miss C returned to the Centre for the first time since late January. However, a further incident occurred when, according to Ms C, Officer 2 implied in conversation that Miss C was not being properly fed. As a result of that incident Miss C did not attend the Centre after 9 March 2004. (Mr and Ms C did not inform the Centre until 20 April 2004 that Miss C would not be returning.)

16. An educational psychologist visited Mr and Ms C at home on 10 March 2004 and in conversation had said that Officer 2 had previously called her in to school reporting a rapid decline in Miss C's behaviour and intellectual skills which Officer 2 related to her medical condition. Mr and Ms C had resented the Educational Psychologist interacting directly with Officer 2.

17. On 6 April 2004 Mr C and Ms C made a complaint against Officer 2 to the Manager. This letter was copied to the Director of Education, the Care Commission and the Ombudsman's office.

18. Mr and Ms C formally complained to the Council after obtaining access to their daughter's records at the Centre. They sent e-mails of 13 April and 30 April 2004 to the Director of Education. The e-mail of 30 April 2004 set out four main areas of complaint namely: the complaint about Officer 3; the management of Officer 2 at the Centre; the failure to maintain adequate records regarding the management of care and education for their daughter; and issues of alleged discrimination against their daughter.

19. The complaint was passed to the Principal Officer Advice and Conciliation (Officer 4) on 11 May 2004. In the course of her enquiry, Officer 4 had meetings with the Head of the Policy, Planning and Communications Group, and a Senior Personnel Officer. Officer 4 had two meetings with Officer 2 (who had left the Centre in March 2004) and obtained a report from the Manager. Officer 4 additionally had meetings and requested reports from the Principal Officer Early Years, the Neighbourhood Liaison Officer, the Educational Psychologist and the Support Coordinator with responsibility for the Centre and she spoke briefly to a Care Commission Officer on 11 May 2004.

20. Officer 4 responded to the complainants on 28 May 2004 in a letter which identified eight heads of complaint. Her letter did not include a statement of whether or not Mr C and Ms C's complaint was justified. It did, however, detail eight recommendations to avoid recurrence and concluded with the opinion that at all times staff at the Centre had acted in good faith with commitment and compassion in what they believed to be Miss C's best interests.

21. Mr C and Ms C wrote a lengthy letter to the Care Commission on 10 June 2004 challenging Officer 4's methodology and maintaining that their daughter had been discriminated against at the nursery. The letter detailed complaints about record-keeping by Officer 2 (in particular, the keeping of a development profile file), and management supervision issues (specifically their daughter's lack of integration into the main room at the Centre). In the main, however, the letter concentrated on correcting what Mr and Ms C considered to be errors of fact and misleading statements in Officer 4's letter which in their view needed to be examined. Mr and Ms C indicated that they had spoken to Officer 4 on 3 June 2004 when she had indicated to them that she would be unwilling to re-

open issues that she had already examined but would, however, address new questions.

22. On 2 July 2004 Mr C and Ms C submitted a complaint against the Centre and the Education Department to the Council's Chief Executive. In the absence of the Chief Executive, the Director of Corporate Services and Acting Chief Executive replied on 6 July 2004 saying that the complaint had been through all of the Council's complaints procedures.

23. On 15 September 2004, Mr C e-mailed the Ombudsman's office complaining that the Education Department had discriminated against their daughter and had carried out a flawed investigation of their complaint regarding her treatment. They were further aggrieved that when the matter had been addressed to the office of the Chief Executive, his office had refused to investigate their concerns. After correspondence, a copy of Officer 3's response of 28 May 2004 was obtained on 17 January 2005 and a copy of the Acting Chief Executive's letter of 6 July 2004 on 4 February 2005 which confirmed that in his view the City of Edinburgh Council's complaints procedure had been completed. I wrote to Mr and Ms C on 9 March 2005 setting out the limitations on the Ombudsman's jurisdiction relating to their concerns (paragraph 3).

24. I considered that it was appropriate to make an enquiry of the Council in respect of their complaints procedures. In his reply of 10 June 2005 to my enquiry the Council's Secretary maintained that Mr C and Ms C's complaint had gone through three stages. Mr and Ms C had initially raised complaints with the Manager; secondly, they had then raised matters with the then Education Department's Advice and Conciliation Service; and thirdly, the complaint had been passed to the Acting Chief Executive who had responded on 6 July 2004.

25. The Council's Secretary informed me that the incoming Director of Children and Families had undertaken a detailed review of the way the complaint was handled. In terms of this, Officer 4 was interviewed and asked to interview other staff as requested by the complainants. The Manager, Educational Psychologist and Early Years Manager were interviewed regarding the contents of Officer 4's report. The Neighbourhood Liaison Officer and Officer 2 could not be seen as they were no longer in the employment of the Council. As a result, the Director's view

was that Officer 4's investigation was undertaken with integrity, and was robust, thorough and lengthy, with an impartial professional approach. The parental complaints were taken seriously and fully addressed following the complaints procedure as laid down in the policy document How to make the Most of the Education Service. The Council Secretary's letter of 10 June 2005 concluded with summarising the progress made in implementing the eight recommendations contained in Officer 4's letter of 28 May 2004.

Conclusion

26. Mr and Ms C first raised their concerns about matters involving Officer 2 with the Centre Manager in January 2004. These concerns were discussed on the telephone with the Manager and at a meeting between Mr and Ms C and Officer 2's line manager. Mr and Ms C made a formal complaint about Officer 2 to the Manager on 6 April 2004.

27. There had not been a substantive response to this formal complaint before Mr and Ms C complained to the Education Department on 13 April and 30 April 2004. The earlier complaints made, however, had not received a local response. I have seen no evidence from the Council that they questioned why there was no documented response or that they reached a considered view that such a response was inappropriate in the particular circumstances.

28. Mr and Ms C's complaints were passed to Officer 4 who investigated them and replied to Mr C and Ms C on 28 May 2004. Having read her report, and also the subsequent review of the investigation by the Director of Children and Families, I accept the Council's view that the way she went about investigating the complaints was acceptable. However, her report did not clearly state whether or not she upheld the complaints, or whether she was unable to reach a definite conclusion. To that extent the service's investigation was flawed.

29. It is unfortunate that Mr C and Ms C's detailed response of 10 June 2004 to Officer 4's letter of 28 May 2004 was not sent to Officer 4 directly. Their subsequent letter of 2 July 2004 to the Chief Executive was responded to in his absence by the Acting Chief Executive. His letter, which explained that referral to the Chief Executive was not part of the complaints procedure, nevertheless informed Mr C and Ms C that the complaints procedure had been exhausted.

There is no indication in his reply to Mr C and Ms C that the Acting Chief Executive had carried out a substantive review. If the procedures do not allow for this, the Acting Chief Executive should simply have referred the matter to the Director of Education.

30. I conclude that the procedure described in How to Make the Most of the Education Service was not properly followed. I, therefore, uphold the complaint.

Recommendations

31. The Ombudsman recommended that the Council apologise to Mr and Ms C for the failings identified; that they review the implementation of their procedures for handling education service complaints in order to ensure that complaints are fully considered locally unless there are exceptional circumstances; and that they take steps to ensure that it is clear to complainants when the local process is complete. The Council informed the Ombudsman that they were willing to accept the recommendations and were prepared to apologise to Mr and Ms C. The Director of Children and Families had instructed a major review of the Department's complaints handling procedures.

31 October 2006

Explanation of abbreviations used

Mr C and Ms C	The complainants
Miss C	Mr C and Ms C's daughter
The Care Commission	Scottish Commission for the Regulation of Care
IEP	Individualised Education Programme
Officer 1	The first learning assistant at the Centre
Officer 2	The second learning assistant at the Centre
Officer 3	An officer in the Advice and Conciliation Service, Education Services
Officer 4	Principal officer, Advice and Conciliation Service, Education Service
The Manager	The Manager of the Centre