

Scottish Parliament Region: Mid Scotland and Fife

Case 200601593: Stirling Council

Summary of Investigation

Category

Local government: Education; Transport to school

Overview

The complainant (Mrs C) raised concerns about how Stirling Council (the Council) had handled complaints she submitted to them following incidents involving her younger son (Child C) and the owner/driver (Mr D) of a coach contracted to take Child C and other pupils on the return trip from a secondary school in Stirling (the School) to their local community (the Village).

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) following the first incident involving Child C, the Council did not take the action they previously stated they would take against Mr D (*upheld*);
- (b) the Council failed properly to investigate the incidents involving Mr D and Child C (*partially upheld*); and
- (c) an internal suggestion that Mr D be suspended and another driver be used for the run was not followed up (*not upheld*).

Redress and recommendations

The Ombudsman recommends that:

- (i) the Council apologise to Mrs C for not following up on their officer's statement that a reprimand would be issued to Mr D;
- (ii) the Council apologise to Mrs C for the way her initial complaints were handled; and
- (iii) should in the future the situation arise that only Mr D's coach is used for conveying pupils home from the School to the Village, the Council offer mediation to explore the basis on which Child C could return to using the service.

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

Main Investigation Report

Introduction

1. The complainant (Mrs C) lives in a village (the Village) some miles distant from Stirling. Mrs C's younger son (Child C) completed his third year at secondary school (the School) in Stirling in June 2007 but at the time the incidents in the complaint occurred, Child C was in his second year. The incidents primarily involved the owner/driver (Mr D) of a coach firm (the Firm), Child C and, in the first incident on 31 August 2005, another older boy.

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

- (a) following the first incident involving Child C, Stirling Council (the Council) did not take the action they previously stated they would take against Mr D;
- (b) the Council failed properly to investigate the incidents involving Mr D and Child C; and
- (c) an internal suggestion that Mr D be suspended and another driver be used for the run was not followed up.

3. Section 8 and Schedule 4 paragraph 7(1) of the Scottish Public Services Ombudsman Act 2002 state that the Ombudsman must not investigate action taken in matters relating to contractual or other commercial transactions of a listed authority. Paragraph 10 of Schedule 4 also precludes the Ombudsman, among other matters, from investigating action concerning conduct or discipline in any educational establishment under the management of an education authority. For the purposes of the complaint, the coach taking Child C home from school is not held to be an extension of the educational establishment Child C attends. Annex 2 sets out relevant sections of the Contract with the Firm, and the Council's statement on pupils' acceptable behaviour.

Investigation

4. The investigation is based on information supplied by Mrs C and the Council. 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) Following the first incident involving Child C, the Council did not take the action they previously stated they would take against Mr D; (b) the Council failed properly to investigate the incidents involving Mr D and Child C; and (c) an internal suggestion that Mr D be suspended and another driver be used for the run was not followed up

5. The Village is located several miles from Stirling. Child C commenced his first year at the School in Stirling in August 2004. He travelled there by scheduled bus service. The return school bus service from the School to the Village at the time of the incidents was operated by the Firm, of which Mr D is both owner and a driver. Although Mrs C has referred to an incident when Mr D allegedly acted in a threatening and intimidating manner towards Child C in August 2004 no record of a telephone call or letter from Mrs C has survived.

6. Mrs C's complaint to the Ombudsman's office originates from three later incidents involving Mr D, Child C, and in the first incident, an older boy.

7. The first of the incidents occurred prior to the bus journey from the School to the Village on the afternoon of 31 August 2005. Mrs C claims that when Child C was in the process of getting on the bus, he was pushed in the chest by Mr D. Child C lost balance and fell back on to an older boy who was behind him on the lower step.

8. On 31 August 2005, Mrs C telephoned Stirling Council (the Council)'s Team Leader (Officer 1) to complain about the incident involving Mr D, Child C and the older boy that afternoon and immediately followed the call up with an email. On 1 September 2005, the mother of the older boy (Mrs B) also telephoned Officer 1 and confirmed her conversation in an email of the same date. That email also referred to general issues of Mr D 's conduct towards pupils which she described as 'intimidatory'. The incident was also reported by Mrs C to Central Scotland Police.

9. On 2 September 2005, Officer 1 emailed Mr D seeking his comments. Mr D responded in an email of 8 September 2005. He stated that he had reported indiscipline and verbal abuse on the bus on 2 September 2005 to the Depute Head of the School on 3 September 2005. He gave his version of events and stated that with regard to the matters raised by Mrs B he had been verbally abused by older pupils.

10. The substance of the information received by Officer 1 was communicated to Mrs C and to Mrs B in emails of 14 September 2005. The email to Mrs C referred to the general problems of children on school transport. With regard to the particular incident, Officer 1 informed Mrs C that he would be writing that day to Mr D 'with a reprimand and to categorically state that any physical contact with pupils is not acceptable'. Further, that Mr D should report any continuing problems to Officer 1 directly.

11. Officer 1 stated that he had had a telephone conversation with Mr D when he advised him: (a) of the seriousness of the allegations and their potential consequences; (b) that it was not in Mr D's interest to get into conflict with pupils or to physically mishandle them; (c) that if there were any situations in the future he should not react but should advise the Council; and (d) that if there were future allegations he would be suspended and, in all likelihood, his contract terminated. Officer 1 followed this conversation up with the following email on 14 September 2005:

'[Mr D], I have written to the two parents regarding their allegations ... Basically it is acknowledging their concerns and that the Council has spoken to you to highlight the concerns.

Also, that [the School] and the local authority should be working together to address any problem of rowdy behaviour when boarding the vehicle or when the vehicle is in motion. If there are any continuing problems please report them to [Officer 2, the Council's Coordination Officer] or to myself directly, and not to react in any way which may be seen as provocative or threatening.

[Mr D], basically an operator in this kind of situation is in a very difficult position. You know that we will support operators in instances when it is an issue of pupil behaviour. We all know how difficult it can be for drivers and I have put the point across to the parents. However, any allegation of physical 'manhandling' can have serious consequences, whether it is fact or otherwise.

As I say, any concerns, get in touch with us and we will try to address the issues. [Officer 1].'

12. On 8 March 2006 Mr D emailed Officer 2. He alleged that on that day a pupil had been tampering with the emergency exit door alarm at the rear of the

50 seat coach and that Child C had been sitting next to the door and the alarm. According to Mr D, Child C had ignored him when questioned and refused to give Mr D his surname. He identified him by his first name and stated that he was the pupil who had made false accusation against him previously. After Child C left the bus and again at his depot, Mr D examined the door and alarm and satisfied himself that there was no fault. Mr D concluded that Child C had been interfering with the emergency exit. Mr D asked Officer 2 that Child C be excluded from the coach. Officer 2 informed the School and Children's Services of the circumstances and Mr D's wish that the pupil be excluded. Officer 2 said that that was within Mr D's rights as safety was a paramount consideration and that if no other effective deterrent could be given, then the pupil should be removed for a given period or until his parents could guarantee his behaviour.

13. According to Mrs C, on 9 March 2006 Child C was allegedly removed from the bus, taken aside, and spoken to at the side of the bus by Mr D. He was allegedly subjected to verbal abuse by Mr D. Mrs C contacted the Council to complain of that incident and a further similar incident on Friday 10 March 2006. Mr D informed Child C that he would not allow him to sit at the rear of the coach.

14. Mrs C contacted Officer 2 twice, on 9 and 10 March 2006. Officer 1 sent an email to Mr D on 10 March 2006 after the second incident but before the third incident was reported by Mrs C. Officer 1's email stated that he had checked with the School and that Child C had a good record at school and was not classed as a troublemaker. Why this should change when he boarded the coach needed to be answered. Officer 1 agreed that Child C should not sit at the back of the vehicle. However, Mr D should not take him aside and speak to him individually. Child C should be allowed to travel with someone sitting beside him rather than sit isolated in a seat by himself. Officer 1 proposed a meeting with Mr D and said he would contact him the following Monday.

15. On 12 March 2006, Mrs C sent a further email saying that Child C was upset by Mr D's intimidation and that she was withdrawing Child C from the Firm's coach. Mrs C's older son continued to travel home using Mr D's coach. Mrs C asked that her complaint be progressed.

16. On 16 March 2006 Officer 2 informed Officer 1 by email that he felt the best way to resolve the issue was for another driver to be assigned to the run

from the School to the Village and to have a possible buddy system in place for Child C.

17. Officer 1 emailed Mr D on 20 March 2006 prior to the proposed meeting taking place. Mr D, however, did not agree to another driver for the run. Officer 1 informed the Council's Planning and Resources Officer (Forward Planning) Children's Services of the situation by email of 29 March 2006. Officer 1 stated that the emergency exit had been examined by both Mr D and the Council, no fault was apparent, and it was not of the type where the alarm could be set off by accident. Further, Mr D was concerned about pupil safety. There seemed no reason why Mr D would make false accusation against Child C. On the other hand, both Mrs C and Child C felt that he was being victimised.

18. Steps were subsequently taken to agree an action plan. By 29 March 2006 the School had agreed to take a role in behavioural issues on school transport with any incident to be reported directly to the school by the bus driver or operator. This had been agreed by Mr D. While the School and Mr D had agreed that a buddy system be implemented, that a senior pupil would be responsible for monitoring pupil behaviour and any contact by or with Mr D and that Child C need not sit in isolation, Child C had not used the Firm's coach after 10 March 2006. The School and Mr D had agreed that pupils should not sit next to the emergency exit.

19. When no reply was sent to Mrs C about the incidents on 9 and 10 March 2006, Mrs C submitted a letter of complaint under the Council's Talk Back procedures, which was dealt with initially by a complaints officer in Children's Services.

20. Mrs C subsequently pursued further her complaint and met with the Council Corporate Complaints Officer (Officer 3) on 10 April 2006. She agreed a list of eight issues identified by Officer 3.

21. In the meantime Mrs B, whose son had been involved in the first incident, emailed Officer 1 on 8 May 2006 to inform him that on 3 May 2006 the alarm buzzer for the emergency door on Mr D's coach had sounded when no one was sitting at the back of the bus in the vicinity of the emergency door. The door was checked on 8 May 2006 by a council officer but he found no malfunction. A

reply was sent to Mrs B the next day. Since Mrs C's elder son continued to use Mr D's coach, Mrs C followed up on Mrs B's contact on 15 May 2006.

22. In pursuing his investigation of matters, Officer 3 spoke to seven officers and obtained information from the Council's Acting Head of Schools and the Head Teacher of the School. Officer 3 responded to Mrs C in a detailed letter of 26 May 2006 dealing separately with the eight points identified in their meeting. Officer 3 detailed his findings as follows:

'...there could have been better contact between Children's Services and the Public Transport Section in Environment Services about incidents reported; there is a need to improve some aspects of recording of reported incidents, from whatever source, on this school transport, particularly at [the School]; there should have been an immediate joint investigation into the alleged 'pushing' incident (on 31 August 2005), and consideration should have been given to removing the driver from that route pending the outcome of the investigation; it would have been appropriate for [the School] to have been informed of the outcome of the inspection of the emergency exit alarm system following the allegation of tampering with the handle; there should have been a more thorough investigation of the allegations that the driver spoke to [Child C] on his own; the conveyance contract does not include a procedure to be followed if the emergency exit alarm sounds during a journey when pupils are on board.

I have considered what action should be taken, and: I have asked that officers from Children's Services, [the School], and the Public Transport Section prepare procedures on information sharing and contact about any reported incident on the bus; I have suggested that a 'log' which can be accessed by Children's Services, [the School], and the Public Transport Section be set up onto which brief details of any contact about an alleged incident on the bus will be recorded - this will mean that there is a full, easily accessible record of all contacts so that any pattern in reported incidents can be identified; I have stressed to officers the importance of keeping records of incidents reported, from whatever source, and the action taken in response to the report; I do not think it is appropriate to have a further investigation into the alleged 'pushing' incident; given the time that has elapsed, and, therefore, the potential for the reliability of witnesses' recollections of events to be challenged, I do not think that further investigation of the allegations that [Mr D] spoke to [Child C] on his own is appropriate. I have asked that a procedure be drawn up for action

to be taken by a driver where the emergency exit alarm sounds during a journey when pupils are on board, and it be included in all conveyance contracts.¹

23. Mrs C was not happy with the Council's response and put the matter in the hands of solicitors. They made the initial complaint to the Ombudsman's office on 30 August 2006. However, Mrs C subsequently withdrew instructions to them. The complaint by the solicitors identified that the Council failed to reprimand Mr D following the first incident on 31 August 2005; failed to properly investigate the three incidents involving Child C; and failed to suspend Mr D and arrange for another driver to be allocated to the run from the School to the Village.

24. Throughout the school year, which commenced in August 2006, demand from pupils exceeded the capacity of Mr D's vehicle and the Council commenced operating a mini-bus on the return journey, which Child C used. Mrs C feared that this additional service might be discontinued from the start of the new school year in August 2007 if the number of pupils travelling from the Village to attend the School dropped.

25. The Council stated that during the school holidays in the summer of 2006, closed circuit television was installed in the coach used by Mr D for the journey from the School to the Village. One camera focussed on the emergency exit at the rear of the bus. The Council stated that there have been no incidents reported of the alarm going off since the CCTV was installed.

(a) Conclusion

26. Officer 3, through his investigation, identified clear defects in the manner in which the first incident was investigated and these are reported at paragraph 22. The matter should not have been dealt with solely by the Public Transport Section. Due to the preclusion on the Ombudsman looking into contractual matters, I am unable to comment on whether in the circumstances a reprimand should have been issued to Mr D. This was, however, a commitment given to Mrs C which was not implemented. The email of 14 September 2005 (paragraph 11) not only was not a reprimand but also it was inappropriate for the email, given the gravity of the matter, to have been addressed in first name terms. I uphold this complaint.

¹ Annex 3 records the measures instigated by the Council since May 2006

(a) Recommendation

27. The Ombudsman recommends that the Council should apologise to Mrs C for not following up on their officer's statement that a reprimand would be issued to Mr D.

(b) Conclusion

28. I agree also with Officer 3's criticisms of the process of investigating the three incidents of 31 August 2005, 9 and 10 March 2006. Officer 3 made a decision not to investigate further those incidents and focussed on seeking to address the defects in reporting procedures and to improving the reporting and investigation of complaints involving school transport. I do not find any fault in the way Officer 3 pursued his investigation of matters raised by Mrs C. However, given the fact that the three incidents were not fully investigated it is understandable why Mrs C did not regard the matter as closed and pursued a complaint to the Ombudsman. I uphold this complaint in part.

(b) Recommendation

29. The Ombudsman recommends that the Council apologise for the way the complaints were handled. She also recommends that should in the future the situation arise that only Mr D's coach is used for conveying pupils home from the School to the Village, the Council offer mediation to explore the basis on which Child C could return to using the service.

(c) Conclusion

30. There was certainly a suggestion made in an internal email of 16 March 2006 from Officer 2 to Officer 1 (paragraph 16) that Mr D be suspended. That did not happen and, a matter of days later, Child C stopped using the Firm's coach. Other suggestions made in the email such as a buddy system for Child C were also not implemented. Mrs C was not informed directly that Mr D would be suspended pending appropriate investigation. I believe that officers are entitled to suggest, and after appropriate consideration, to discount taking possible actions. In these circumstances I do not uphold this complaint.

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

21 November 2007

Explanation of abbreviations used

Mrs C	The complainant
The Village	The village where Mrs C and her sons reside
The Council	Stirling Council
Child C	Mrs C's younger son
The School	A school in Stirling
Mr D	The owner/driver of a coach
The Firm	Mr D's coach firm
Officer 1	Team Leader, Public Transport Section
Mrs B	Another parent
Officer 2	Co-ordination Officer, Public Transport Section
Officer 3	Corporate Complaints Officer

The Council's contract with the Firm

The Council provided a copy of their Conditions of Contract, drawn up by their Technical Services Transport Co-ordination Centre in April 2002 for the Provision of Conveyance for School Pupils by Private Hire Contract. Sub-section 4.6.7 grants the Council the right to suspend or terminate the contract with immediate effect, without prior notice and without compensation to the Contractor, and recover any losses due from the Contractor, if the Contractor or any of his employees is reckless or acts improperly towards any passenger or council employee involved with school transport matters. Section 13 sets out conditions relating to Code of Conduct. Sub-section 13.4 stipulates that the driver must not remove schoolchildren from the Contract vehicle for misbehaviour. The driver is required to check misbehaviour and will report the circumstances of serious or repeated incidents of misbehaviour to the school covered by the Contract and to the Director of Technical Services. Should the behaviour of children be so unruly as to make it difficult for the driver to proceed in safety, he should stop if it is safer to do so and, if the behaviour is of a criminal nature, either call the police or, if it is safe to continue, transport the pupils to the nearest police station. A full report should be submitted to the Director of Technical Services. Section 14 sets out conditions relating to the Safety of Schoolchildren. Sub-section 14.1 requires the Contractor to take all steps required by law, statutory or otherwise, to ensure the safety of schoolchildren under the Contract. Sub-section 14.4 states that all doors will be properly fastened by the driver after a schoolchild enters or leaves the vehicle and the driver will forbid schoolchildren to touch the handles of the vehicle doors, except when entering or leaving the vehicle and sub-section 14.8 requires the driver to ensure that all doors and emergency exits remain free of obstruction, giving a clear exit in the case of emergency.

The Council's Pupil Acceptable Standards Statement regarding School Transport

The Council make it a condition for pupils accessing school transport that they are aware of the conditions and responsibilities incorporated in the Pupil Acceptable Standards Statement. This includes a prohibition on damaging or misusing any equipment on the bus. Pupils are also required to listen to and to follow instructions given by any driver or member of staff, to be courteous to them, and not to distract the driver from getting the vehicle safely to their bus

stop. Pupils are warned that if a school receives complaints, the school will contact their parents. Misbehaviour, or failure to follow the guidance, might lead to the loss of entitlement to free school transport.

Action Taken by the Council since May 2006

In commenting on the draft report on 16 October 2007, the Council's Director of Corporate Services outlined the progress made in implementing the improvements suggested in their Talkback response to Mrs C of 26 May 2006 (paragraph 22).

In addition to daily contact between officers in Children's Services and the Public Transport Coordination team, regular liaison meetings have been held on a more formal basis to discuss strategic issues.

Draft processes have been agreed for complaints and for dealing with emergencies (for example school or road closure). Once formalised, these procedures will be made widely available.

A draft procedure for dealing with the situation when an emergency exit alarm sounds has been clarified. When agreed, this will also be shared with operators, schools, Children's Services, schools and passengers.

A joint log for logging complaints for schools and other trips is being upgraded and made easier to use.

Updated guidance for pupils travelling by bus has been issued to school children and made available on the Council website.

A more formal approach has been adopted in dealing with operators following complaints. These include inviting operators, a school representative and Children's Services to a meeting. Formal letters are now to be sent to operators after these meetings.

With regard to the third recommendation in the Ombudsman's report, appropriate notes have been put on the files for Child C, the operator they currently travel with, and the Firm, to trigger the recommendation for mediation should the current situation alter to leave Mr D as the only operator available.