

## Scottish Parliament Region: South of Scotland

### Cases 200400363 & 200400840: Scottish Borders Council and Scottish Government Education and Training Directorate

#### Summary of Investigation

##### **Categories**

Local government: Education; Complaints handling (including appeals procedures)

Scottish government and Devolved Administration: Administration; Education; Other

##### **Overview**

The complainant (Mr C) is the father of a young person (referred to in this report as Mr A) who had recognised special educational needs and attended a mainstream secondary school (the School) in the area of Scottish Borders Council (the Council). After bullying incidents at the School he suffered acute clinical depression (ACD). The complaint made by Mr C related to how the Educational Psychology Service of the Council dealt with Mr A thereafter. Mr C considered the Council had failed to implement their duties under the education legislation. He then sought the intervention of the Scottish Executive<sup>1</sup> Education Department (SEED) and was aggrieved at SEED's reasons for not exercising their default powers.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council failed in their duty under the Standards in Scotland's Schools etc Act 2000, with regard to Mr A's educational needs following an episode of ACD (*no finding*);
- (b) the Council failed to ensure good professional management and to follow advice on good practice guidelines (*not upheld*);
- (c) the Council failed to disclose a prior 'gentleman's agreement' whereby an adolescent mental health unit rather than the Council's Educational Psychology Service took a lead role (*upheld*);

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<sup>1</sup> 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.

- (d) the Council abrogated their duties and responsibilities as education authority without notifying Mr and Mrs C or Mr A (*not upheld*);
- (e) an educational psychologist was directed by her line manager, for specious reasons, not to attend meetings at the School on 6 March 2003 (*not upheld*);
- (f) the Council's replies to Mr C's correspondence failed to answer his specific questions (*not upheld*);
- (g) in handling Mr C's formal complaint, the Chief Executive rewrote the complaint and failed to answer detailed points (*not upheld*);
- (h) the Chief Executive's response of 27 January 2004 to a request from SEED for information contained misleading statements and factual inaccuracies (*not upheld*);
- (i) SEED rewrote his letter of complaint to them of 30 September 2003 and failed to address all the issues (*partially upheld*);
- (j) SEED repeatedly failed to answer specific questions posed of them (*not upheld*);
- (k) SEED failed to address or explain why they did not deal with alleged breaches in duties detailed under the Standards in Scotland's Schools etc Act 2000 (*partially upheld*);
- (l) SEED failed to take appropriate action when informed of Mr C's concerns about factual inaccuracies in the Council's Chief Executive's response to them of 27 January 2004 (*not upheld*); and
- (m) SEED failed to answer questions posed by Mr C and passed their reply off as being substantive (*not upheld*).

### ***Redress and recommendations***

The Ombudsman recommends that the Council should give consideration to ensuring a more formal approach is adopted in informing and consulting with parents of children in future like circumstances, and particularly where there has been a significant absence from school.

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

With reference to SEED, the Ombudsman makes no recommendation on the basis that they have advised her that instructions have been issued to avoid a recurrence of matters where the complaint was partially upheld. However, she suggests that SEED may wish to take steps to ensure that their policy and practice in relation to exercising their default powers is fully publicised.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) is the father of a young person (referred to in this report as Mr A) who had recognised special educational needs and attended a mainstream secondary school (the School) in the area of Scottish Borders Council (the Council). After bullying incidents at the School he suffered acute clinical depression (ACD). The complaint made by Mr C related to how the Educational Psychology Service of the Council dealt with Mr A thereafter. Mr C considered the Council had failed to implement their duties under the education legislation. He then sought the intervention of the Scottish Executive Education Department (SEED) and was aggrieved at SEED's reasons for not exercising their default powers.

2. The Education (Scotland) Act 1980 (as amended) imposes duties on education authorities in Scotland to keep under consideration the cases of recorded young persons. Section 70 of the 1980 Act, as amended, provides default powers to the Scottish Ministers to enforce the duty of education authorities and other persons. It states that if Scottish Ministers are satisfied (either on complaint by any person interested or otherwise) that an education authority, a School Board, the managers of a school or educational establishment or other persons have failed to discharge any duty imposed on them by or for the purposes of the Act (or of any other enactment relating to education), Scottish Ministers may make an order declaring them to be in default in respect of that duty and require them, before a date stated in the order, to discharge their duty. If the duty is not thereafter discharged, the Scottish Ministers may make arrangements as they think fit for the discharge of the duty or the Court of Session may, on the application of the Lord Advocate, order specific performance of the duty.

3. The Standards in Scotland's Schools etc Act 2000, places additional duties on education authorities with implications for psychological services, namely that:

- school education must be directed to the development of the personality, talents and mental and physical abilities of the child or young person to his or her fullest potential;
- that in providing school education, education authorities must have due regard to the views of children or young persons in decisions that significantly affect them, taking account of their age and maturity; and

- that education authorities must endeavour to secure improvement in the quality of the school education they provide, with a view to raising standards of education.

4. Advice was issued to the then incoming new education authorities by the former Scottish Education and Industry Department in the form of Circular 4/96 on 25 March 1996 and was subsequently incorporated in a Manual of Professional Practice in 1999. Paragraph 187 of the Circular advised an education authority to undertake a review of a Record of Needs, annually or more frequently and particularly at key points in their education or 'where there is evidence to show that the needs of the young person are changing'.

5. The Scottish Public Services Ombudsman Act 2002, Section 8 and Schedule 4 of paragraph 10, restricts the ability of the Ombudsman to look into educational complaints. The Ombudsman must not investigate matters concerning:

- the giving of instruction, whether secular or religious; or
- conduct, curriculum or discipline in any education establishment under the management of an education authority.

In terms of the underlying causes of Mr C's complaint, it is held that this includes incidents of alleged bullying at the School and the School's response.

6. The complaints from Mr C that I have investigated are:

- (a) the Council failed in their duty under the Standards in Scotland's Schools etc Act 2000, with regard to Mr A's educational needs following an episode of ACD;
- (b) the Council failed to ensure good professional management and to follow advice on good practice guidelines;
- (c) the Council failed to disclose a prior 'gentleman's agreement' whereby an adolescent mental health unit rather than the Council's Educational Psychology Service took a lead role;
- (d) the Council abrogated their duties and responsibilities as education authority without notifying Mr and Mrs C or Mr A;
- (e) an educational psychologist was directed by her line manager, for specious reasons, not to attend meetings at the School on 6 March 2003;
- (f) the Council's replies to Mr C's correspondence failed to answer his specific questions;

- (g) in handling Mr C's formal complaint, the Chief Executive rewrote the complaint and failed to answer detailed points;
- (h) the Chief Executive's response of 27 January 2004 to a request from SEED for information contained misleading statements and factual inaccuracies;
- (i) SEED rewrote his letter of complaint to them of 30 September 2003 and failed to address all the issues;
- (j) SEED repeatedly failed to answer specific questions posed of them;
- (k) SEED failed to address or explain why they did not deal with alleged breaches in duties under the Standards in Scotland's Schools etc Act 2000;
- (l) SEED failed to take appropriate action when informed of Mr C's concerns about factual inaccuracies in the Council's Chief Executive's response to them of 27 January 2004; and
- (m) SEED failed to answer questions posed by Mr C and passed their reply off as being substantive.

### **Investigation**

7. The investigation is based on information provided by Mr C and the response to enquiries of the Council and SEED. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, the Council, and SEED were given an opportunity to comment on a draft of this report.

8. Mr A was born in 1986. He was diagnosed with Semantic Pragmatic Language Disorder (SPLD) in the autistic spectrum and had the support of the Council's Educational Psychological Service from the time he entered primary school. A Record of Need (RON) for Mr A was first completed in 1993. This was updated during his primary school years and when he transferred to secondary school (the School) in 1998.

9. In early March 2002, Mr A was the victim of bullying at the School. He was hospitalised for four days for ACD. He received medical and intensive therapeutic support from an NHS adolescent mental health unit (the Unit) providing assessment, treatment and support for children, young people and families in the Borders. Mr C stated that Mr A received regular medication and counselling from the local Child Psychology Department of the NHS until September 2003.

10. On 16 April 2002, at the start of the summer term, both Mr C and a doctor (the doctor) at the Unit telephoned the School to outline Mr A's difficulties and to discuss his support needs. There was also further contact between the Unit and the School, notably a letter of 5 June 2002 from the Unit to the School, but there was no direct contact between the Unit and the educational psychologist at the Council (Officer 1) and that letter was not copied to her.

11. Officer 1 was stated to have been made aware of Mr A's vulnerabilities during her routine visits to the School. The Council have stated that Officer 1 decided that, as supports were being actively and directly co-ordinated between the School, Mr and Mrs C and the doctor at the Unit, her active involvement was unnecessary. No requests were made at that time for a further review.

12. Mr A completed his fourth year (S4) and returned to the School to commence S5 in August 2002. In September 2002, Mr A suffered a relapse and was hospitalised for seven days.

13. On 17 November 2002, with Mr A's sixteenth birthday imminent, Mr C sent an email to the Council's Acting Director of Education regarding Mr A's RON Continuation 16 - 18 years. Mr C stated that Mr A intended to progress his studies at Higher Grade and requested a reply as soon as possible. Mr C's email was acknowledged the next day. It was forwarded to the Council's new Director of Education and Lifelong Learning (the Director), Officer 1 and her line manager the Principal Education Psychologist (Officer 2). Mr C was informed that it had been passed to relevant Council staff. No timely substantive response was sent.

14. At a parent-teacher meeting in January 2003, Mr and Mrs C learned that no specific support measures had been put in place following Mr A's previous difficulties and hospitalisation. This prompted Mr C to send a follow-up email.

15. The Director replied on 28 January 2003. He apologised for the delay in responding and dealt specifically with post-16 years planning for Mr A. The Director confirmed that Mr A would be supported to the level defined in his RON, potentially to July 2005, if he chose to stay in school. The Director provided Mr and Mrs C with two specific contact names at the School, including the Principal Teacher Learning Support. He also responded to Mr C's points regarding the difficulties Mr A had experienced subsequent to the Future Needs Review on 16 February 2002.

16. The Director stated that the School had contacted Officer 1 at the earliest opportunity and had informed her of Mr A's engagement with the Unit. Because there were other professionals actively involved from the Unit, Officer 1 had taken a monitoring/consultative/liaison role. The Director stated that Officer 1 had kept in regular touch with school support staff on her routine school visits and was aware of Mr A's episodes of depression. Mr A, however, had subsequently returned to school. The Director offered Mr and Mrs C the opportunity to discuss matters with Officer 1 and he provided them with her direct dial number. The Director also referred to a review meeting for Mr A, which was then imminent.

17. Mr C had a meeting with staff at the Unit on 3 February 2003. Mr C was informed that the Unit's files disclosed no contact between the Unit and Officer 1. A doctor at the Unit allegedly made a remark to Mr C which Mr C took to indicate that the Unit had undertaken work which should have been undertaken by an education psychologist. In consequence Mr C sent a strongly worded fax to the Director on 4 February 2003, in which he reported the alleged statement made to him.

18. In his initial response of 5 March 2003, the Director expressed his concern that Mr C's communication impugned the professionalism of teachers at the School and the Educational Psychological Service. He promised a fuller response once contact could be made with the doctor from the Unit, who was then on long term holiday leave. This letter was forwarded to Mr C by email by Officer 2. Mr C responded immediately on 5 March 2003 to Officer 2.

19. Following receipt of these emails Officer 2 met with Officer 1 and he decided that Officer 1 should not attend the review meeting to be held on 6 March 2003.

20. On 6 March 2003, Mr and Mrs C attended two meetings at the School. The first meeting was at 09:00 and was with the Head Teacher, Assistant Head Teacher and Principal Teacher Learning Support. It dealt with a number of matters including Mr C's allegations of a failure of school staff to deal with bullying and Mr A's need for more individualised support. The Future Needs Review meeting was held in the afternoon. Mr A attended that meeting. A report by Officer 1, following her assessment of Mr A on 4 February 2003, was

presented to the meeting. Mr C received a copy of the report which the Council said was positive about Mr A's development.

21. Officer 2, meantime, had been able to speak with the Director at the Unit on 5 March 2003. He spoke with Mr C on 7 March 2003 and then, on 11 March 2003, replied in detail to Mr C. Officer 2 explained his understanding of the roles of the Unit and of the Educational Psychology Service. He said that the Unit took the lead role in treating the ACD, and that, as such, it also had a responsibility to communicate with Officer 1. He also confirmed that the Unit had not sent the clinical psychology report on Mr A to the Education Psychology Service nor had that Service received any communication from the Unit asking for information to contribute to their assessment. Officer 2 explained that the decision not to involve Officer 1 in the meeting on 6 March 2003 was taken by him after discussing with Officer 1 concerns about Mr C's attitude to her as expressed in emails on 5 March 2003.

22. Mr C responded in a letter of 23 March 2003 in which he commented on the 36 paragraphs of Officer 2's letter. He maintained that under Section 2 (1) of the Standards in Scotland's Schools etc Act 2000 (and the good practice guidance) an automatic review should have been triggered due to the significant changes in Mr A's circumstances (clinical depression, hospitalisation and medication). He also questioned what he had previously been told about Officer 1's liaison role. He emphasised that the Council's education service was legally the lead agency in respect of Mr A's education and should have taken the major role in the matter and should have initiated contact with the Unit.

23. Before going on leave, Officer 2 passed Mr C's letter of 23 March 2003 to the Director. The Director responded on 1 April 2003, stating that rather than continue to write, he felt the opportunity should be taken to meet to discuss issues face-to-face. Mr C responded by saying his attendance at a face-to-face meeting was conditional on first receiving a reply to the issues he had raised.

24. Mr C submitted a formal letter of complaint to the Council's Chief Executive on 5 April 2003, an action he said he was required to take because of the Director's failure to have Officer 2 reply to points he had raised in his letter of 23 March 2003. Mr C's formal complaint alleged that the Council, in neglecting to deal with his email of 17 November 2002, had failed in their duties under statute or to apply good practice guidelines, had failed to provide a



written response to questions he had put to them about the Council's education service abrogating their responsibility as lead agency with regard to education matters involving Mr A, and that the Director had inappropriately remarked that answering Mr C would result in delays in the provision of other children's special educational needs. Mr C stated that he had considered mediation but felt that the Director's intransigent position now excluded this as a possibility.

25. The Chief Executive sent a holding letter on 26 June 2003. After consulting with the Head of Legal Services, he responded on 3 July 2003. The Chief Executive accepted that there had been delays and failures in communication but he considered the Council had at all times taken account of what they considered to be in Mr A's best interests and had not, in the Chief Executive's view, failed to fulfil their statutory duties and obligations towards Mr A. With regard to the issues at paragraph 23 he maintained that full cognisance had been taken over a number of years of Mr A's special needs, with regular and more frequent reviews than guidelines advised by the Scottish Executive. Throughout Mr A's mental health crisis during the past year his needs had been accommodated within support plans within the School. The Chief Executive viewed the significant change in Mr A's circumstances to be a health issue not a change in educational needs and seemed to him to have been handled well by Mr and Mrs C as parents, by School staff and by medical personnel. There had been no role for an educational psychologist, as relevant medical specialists were handling this. No-one had asked for an earlier review and at the routine review on 6 March 2003 no-one had indicated the review should have been held earlier. The Chief Executive conceded, however, that it might have been helpful, but not essential, if the School had suggested a case review in August 2002. The Chief Executive did not consider that there had been an abrogation of responsibility, in terms of the Council's lead agency status in respect of education needs. The point at issue arose from Mr A's health problems, which were clearly medical and three detailed letters had been sent to Mr C on 28 January 2003, and 5 and 11 March 2003. With regard to a remark made by the Director in correspondence about use of time, the Chief Executive accepted the Director's letter of 5 March 2003 could have been worded better but maintained that it was factually correct.

26. The Chief Executive concluded by saying that he would ask the Director to arrange an urgent meeting with Mr and Mrs C.

27. Mr C delivered a reply to the Chief Executive on 7 July 2003. He stated that he had waited from 14 April 2003 to 5 July 2003 for a reply only to find that the Chief Executive had rewritten his complaints. He emphasised that the bullying incident at the School had caused his son's ACD and that, as a direct consequence, Mr A's schooling was affected. He repeated the facts as he saw them at that time and sought clarification.

28. On 1 August 2003 the Director provided a point by point response to Mr C's letter of 7 July 2003, stating that the causal line between the bullying and the clinical depression could not be so directly stated and that the School had acted very quickly when alerted. The Director made the point that the medical crisis certainly impinged on how Mr A was taught through the crisis period but did not substantively require an educational response. The Director additionally stated that he did not accept that anyone in the Psychological Service or the system failed or behaved inadequately. The Director offered a face-to-face meeting rather than engage in further correspondence.

29. Mr C agreed to a face-to-face meeting. This was held on 14 August 2003 and was attended by the Director, Officer 2 and the Council's Monitoring Officer. The Chief Executive was unable to attend because of a road accident. According to Mr C, the meeting discussed the initial bullying incident at the school in early 2002, the detail of the good practice guidance, what the doctor at the Unit had said to Mr C and the failure to respond in a timely manner to Mr C's email of 17 November 2002. In the course of discussion reference was made to a 'gentlemen's agreement between the NHS and education authority.

#### *Complaint to the SEED*

30. On 10 September 2003, Mr C submitted a complaint to SEED alleging firstly that the Council had failed to comply with their statutory duties under the Standards in Scotland's Education etc Act 2000 and he asked that they consider the matter in terms of Section 70 of the Education (Scotland) Act 1980. Secondly, he asked what sanctions or redress a parent or child had, or could apply, that were both quick and readily available, to ensure that a local education authority complied with their statutory and regulatory duties and their responsibilities with regard to the child's education.

31. After receiving the complaint, SEED wrote to the Chief Executive regarding the Section 70 Appeal and he responded in a seven page letter of 27 January 2004.

32. SEED did not contact Mr and Mrs C for further clarification. On 14 April 2004, an officer in SEED's Additional Support Needs Division (Officer 3) responded to the complaints of 10 September 2003, outlining that the key purpose of the Section 70 power was to secure compliance with a statutory education duty. If the complaint was that the Council had failed to carry out a formal review of Mr A's RON after November 2002, events had been overtaken by the formal review conducted in March 2003, which preceded the complaint to Ministers by some six months. Officer 3 stated that Mr C's allegation did not raise a matter of current breach of statutory duty on the part of the Council. Accordingly, Scottish Ministers did not consider it appropriate to initiate a Section 70 investigation. No reply was submitted to the second point in Mr C's letter of 10 September 2003 (see paragraph 30).

33. Mr C responded to that letter on 18 April 2004. He alleged that SEED had misdirected itself by reinterpreting his complaint, which they had then simplified to the narrow issue of failure to hold a review. Secondly, they had failed to address the substantive issues in relation to the Council's general duty of care for his son. Thirdly, SEED had, in Mr C's view, failed to address the substantive additional duties placed on the Council by the Standards in Scotland's Schools etc Act 2000. He sought a reply by 15 May 2004. On 23 April 2004, Mr C provided Officer 3 with further information, including a ten page response to the Chief Executive's letter of 27 January 2004.

34. On 17 May 2004, Officer 3 replied to Mr C's two April letters, clarifying the Scottish Ministers' powers in terms of Section 70 of the Education (Scotland) Act 1980 (as amended). Officer 3's letter also answered the second point of Mr C's letter of 10 September 2003 and advised him of his ability to seek independent legal advice on any possible remedy his son might have against the education authority. Such matters were not within the remit of the Scottish Ministers but if he was concerned with maladministration then he might wish to approach the Ombudsman.

35. On 19 May 2004, Mr C sent a complaint to the Head of SEED about the handling of his complaint by Officer 3. He quoted the duty in Section 2 of the Standards in Scotland's School etc Act 2000 which he felt the Council had neglected (see paragraph 3). Mr C stated that he did not think that a local educational authority should only have to be held to account effectively through the courts.

36. A reply was sent by the Head of SEED on 19 July 2004 reiterating that the Scottish Ministers were unable to look into the matter under Section 70 of the 1980 Act.

37. Mr C's complaints were submitted to the Ombudsman on 12 September 2004. Following a meeting with Mr C on 30 November 2004 to discuss his complaint, enquiries were made of the Council and SEED.

38. The Council's response to the complaint was prepared by a retired senior local government officer (Officer 4) who had worked for a number of local authorities during which time he held responsibility for special educational services and had been Monitoring Officer for another authority. In the preparation of his response the Director had informed him that in the Director's view a formal review in or around April 2002 which would have involved Mr A would have been counter-productive in his integration into school life without any serious prospect of a change in Mr A's RON.

39. It is clear from the investigation of this complaint that a significant breakdown in Mr C's trust of the Council occurred as a result of the set of circumstances which befell Mr A. This breakdown followed the episodes of ACD, Mr C's conviction that this was directly attributable to the bullying, and the alleged remarks made by a doctor at the Unit.

40. Fundamental disagreements have arisen between Mr C and the Council which are reflected in the individual heads of complaint. The underlying theme, however, is whether Mr A's return to school following the ACD should, as a matter of good practice, have triggered an automatic review of his RON. Whether or not this complaint could have been avoided, the complaint as a whole reflects the need for care and clarity in communicating with parents about roles and responsibilities at times of stress and difficulty.

*(a) Conclusion*

41. The bullying incidents were clearly seen by Mr C to have caused Mr A's depression. Examination of those incidents is, however, outside the scope of the Ombudsman's powers. Mr C believes that the responsibilities laid on the Council by statute and good practice advice suggest that the ACD should have triggered an automatic review of his son's needs. The Chief Executive, in his letter of 3 July 2003, responded specifically to this point, saying that the ACD

was a 'health issue, not a change in educational needs per se'. My view is that the Council's position is reasonable. It is unfortunate that Mr C was not made more fully aware in the Spring of 2002 of the Council's understanding of their responsibilities.

42. It is clear that the Council believe that the expression 'liaison role' properly describes the role of Officer 1. Mr C interprets this as meaning that Officer 1 should have actively liaised between the School, the Education Psychology Service and the Unit. However, the Council describe her as fulfilling this role by keeping a watching brief on the communications between the School and the Unit, and being ready to act if anyone thought further action was needed.

43. None of those involved requested a formal review of Mr A's needs and Mr A was reintegrated to the School in April 2002. I am unable to determine whether or not Mr A achieved his 'fullest potential' because the Council failed in their duty to him in terms of section 2 of the Standards in Scotland's Schools etc Act 2000 (paragraph 3). I do not, therefore, make a finding on this complaint.

*(b) Conclusion*

44. The Director and relevant staff were aware of the content of Mr C's email of 17 November 2002 within 24 hours. The delay to 28 January 2003 to respond was unfortunate. An expression of regret for this omission was, however, tendered. Generally, the Council and the predecessor authority, in administering Mr A's impairment and RON over more than a decade, do not appear to me to have exemplified significant shortcomings or lack of good professional management. I do not uphold this complaint.

*(c) Conclusion*

45. The NHS took the lead role in treating the ACD and provided relevant suggestions directly to the School regarding Mr A's welfare. The reference to the 'gentlemen's agreement' was used in discussion during a meeting in August 2003 well over a year after the period to which it relates. It had the consequence of confirming to Mr C his belief that information had been kept from him.

46. It is disappointing that when Mr A returned to school in April 2002 following his depressive episode in March 2002 the respective roles of the Unit and the Educational Psychology Service were not clearly articulated to Mr and Mrs C and Mr A. By the time the Council gave an explanation of their view of their

responsibilities Mr C had lost faith in them. I do not, however, believe that there was any deliberate attempt by the Council to conceal relevant information from Mr C, rather my view is that the phrase 'gentlemen's agreement' refers to a presumed common understanding of the respective roles of the Council and the NHS. The phrase 'gentlemen's agreement', however, was an unfortunate description applied to what should be construed as a reasonable means of ensuring that Mr A, in returning to school after serious illness, received appropriate support in the school.

47. At the crucial time there was a failure to articulate clearly to the parents what would happen in Mr A's case. For these reasons, I uphold the complaint.

*(d) Conclusion*

48. While understanding the rationale Mr C has employed in making this allegation, I do not consider that the evidence suggests that the Council abrogated their responsibilities for Mr A. What is lacking is the clear articulation of the respective roles of the School, the Unit and the Educational Psychology Service. I do not uphold the complaint.

*(e) Conclusion*

49. I accept that the matter could with hindsight have been better handled but I do not consider that the reasons given by Officer 2 for withdrawing Officer 1 from the future needs review meeting were specious. Officer 2 was rightly concerned that the meeting should be focussed and productive, with the wellbeing of Mr A paramount, and he was also concerned for the wellbeing of his colleague. On balance I do not uphold the complaint.

*(f) Conclusion*

50. I have reviewed all the correspondence between Mr C and the Council. I consider that the Council have sought to answer the points made by Mr C, but Mr C has not accepted those answers. In addition a meeting offered in a letter of 1 April 2003 was eventually held on 14 August 2003. I do not uphold this complaint.

*(g) Conclusion*

51. I consider that while the Chief Executive's response of 3 July 2003 did seek to reconstruct Mr C's complaint, the letter reflected the substance of Mr C's complaints and succinctly communicated the Council's position. I do not uphold this complaint.

*(h) Conclusion*

52. The Chief Executive's response to SEED was in respect of a request made by Mr C that, since in his view the Council had failed in their duties in terms of the education legislation, SEED should exercise their default powers. Obviously the Chief Executive did not concur and provided SEED with a lengthy and informed response. I do not consider that letter contained any substantive misleading statement or significant inaccuracy. I do not uphold this complaint.

*(i) Conclusion*

53. I do not find evidence to support Mr C's contentions that SEED rewrote his complaint. The initial response did not address the second part of Mr C's letter of 10 September 2003 but this omission was rectified by SEED's subsequent letter. I partially uphold this complaint. The Head of Service at SEED has informed me that he has issued instructions to prevent a re-occurrence

*(j) Conclusion*

54. I do not consider that SEED failed repeatedly to respond to questions raised by Mr C. Their involvement was to consider his request that they should instigate use of their discretionary default powers and they explained why they would not do that in their letters of 14 April 2004 and 17 May 2004. I do not uphold this complaint.

*(k) Conclusion*

55. The initial letter from SEED of 14 April 2004 was a decision letter on a formal request from Mr C that Scottish Ministers exercise their discretion to use their default powers under section 70 of the Education (Scotland) Act 1980 (as amended) because Mr C considered the Council had breached their duties under the Standards in Scotland's Schools etc Act 2000. That letter, sent some seven months after Mr C's request, should have clearly stated that alleged breaches of duty under the two Acts had been considered. I partially uphold this complaint.

*(l) Conclusion*

56. The decision not to intervene was a discretionary decision SEED were charged to take on behalf of the Scottish Ministers, and they explained their reasons to Mr C. If Mr C on the other hand considered that not only were the Council in breach of their statutory duties but SEED unreasonably refused to intervene, then he could on both accounts have exercised a legal remedy. On

this specific complaint, I have stated at paragraph 52 that I do not consider that the Chief Executive's letter was materially misleading or inaccurate. I do not consider that SEED required to seek further clarification given the basis on which their decision not to intervene was based. I do not uphold this complaint

*(m) Conclusion*

57. While Mr C does not accept SEED's position, their reasons for not exercising their discretion have been given. A challenge that they had been wrong, or had misdirected themselves, is one for the courts to decide. I do not uphold this complaint.

*Recommendations*

58. In light of the events to which this report related the Ombudsman recommends that the Council should give consideration to ensuring a more formal approach is adopted in informing and consulting with parents of children in future like circumstances, and particularly where there has been a significant absence from school.

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

60. With reference to SEED, the Ombudsman makes no recommendation on the basis that they have advised her that instructions have been issued to avoid a recurrence of matters where the complaint was partially upheld. However, she suggests that SEED may wish to ensure that their policy and practice in relation to exercising their default powers is fully publicised.

19 December 2007



**Explanation of abbreviations used**

Mr C	The complainant
Mrs C	The complainant's wife
Mr A	The complainant's son
The School	secondary school attended by the complainant's son
The Council	Scottish Borders Council
The Educational Psychology Service	The Educational Psychology Service of the Council
SEED	Scottish Executive Education Department
RON	Record of Need
ACD	Acute Clinical Depression
The Unit	NHS adolescent mental health unit
The doctor	A doctor at a National Health Service Unit
Officer 1	An educational psychologist at the Council
The Director	The Council's Director of Education and Lifelong Learning
Officer 2	The Principal Educational Psychologist and Officer 1's line manager

The Chief Executive

The Council's Chief Executive

Officer 3

An officer in the SEED Additional Support Needs Division

Officer 4

A former senior local government officer who drafted the Council's response