

Case 200400224: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Education; Special educational needs

Overview

The complainants (Mr and Mrs C), the parents of a teenage son (Child C) with special educational needs, raised a number of concerns about Child C's education while he attended three of the City of Edinburgh Council's (the Council) schools (School A, School B and School C) and about the way their complaints had been handled by the Council. In their initial submission they made 17 specific complaints. These were the subject of an earlier detailed report on which both Mr and Mrs C and the Council commented. In light of those comments, it was decided not to pursue further four specific heads of complaint and to group together others in this amended report.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed in their statutory duty to offer appropriate full-time education to Child C suitable for his needs (*no finding*);
- (b) failed to provide Mr and Mrs C as parents with adequate and sufficient information to make an informed choice of school for Child C and to ensure smooth transitional arrangements and liaison between schools (*not upheld*);
- (c) failed, following Child C's exclusion from School C in September 2002, to take timely and appropriate steps to deal with the exclusion and to support Child C and Mr and Mrs C (*upheld*);
- (d) failed to deal in an appropriate and timely manner with Mr and Mrs C's placing request for Child C to attend a residential school in England (*partially upheld*); and
- (e) dealt inappropriately with two complaints Mr and Mrs C submitted (*partially upheld*).

Redress and recommendations

The Ombudsman considers that the report highlights the difficulties in providing for a child where special educational needs are compounded by behavioural difficulties and the frustrations experienced by parents striving to achieve the best possible provision of education services to meet their child's needs. While the Council's Education Department generally had proper regard to their obligations, the lack of local options available undoubtedly had an important bearing on their responsiveness. The Ombudsman recommends that the Council:

- (i) review the problems confronted by Mr and Mrs C in securing appropriate suitable education to meet Child C's needs;
- (ii) apologise to Mr and Mrs C for their failures identified in the report; and
- (iii) review the implementation of the Council's complaints procedures particularly with regard to services for children and young people.

Main Investigation Report

Introduction

1. The complainants (Mr and Mrs C) have two children. Their teenage son (Child C) was born in the United Kingdom in 1990. The family moved to the United States where, at the age of four, Child C was diagnosed as having Pervasive Development Disorder with a special education eligibility of Autism. In June 1999 the family returned to Edinburgh. In the following four years, Child C attended three different schools in Edinburgh (School A, School B and School C). Problems arose at each of these schools and Child C was excluded from School C in September 2002. In April 2003, Mr and Mrs C made a successful placing request for Child C to be educated at a specialist residential school in England (School D). Child C commenced his education at School D in September 2003. The City of Edinburgh Council (the Council) continued to pay for Child C's education there.

2. The complaints from Mr and Mrs C which I have investigated are that the Council:

- (a) failed in their statutory duty to offer appropriate full-time education to Child C suitable for his needs;
- (b) failed to provide Mr and Mrs C as parents with adequate and sufficient information to make an informed choice of school for Child C and to ensure smooth transitional arrangements and liaison between schools;
- (c) failed, following Child C's exclusion from School C in September 2002, to take timely and appropriate steps to deal with the exclusion and to support Child C and Mr and Mrs C;
- (d) failed to deal in an appropriate and timely manner with Mr and Mrs C's placing request for Child C to attend a residential school in England; and
- (e) dealt inappropriately with two complaints Mr and Mrs C submitted.

Investigation

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

4. Three years after the birth of Child C in 1990, Mr and Mrs C moved to the United States where, at the age of four, Child C was diagnosed as having Pervasive Development Disorder with a special education eligibility of Autism.

5. In late 1998, in preparation for the family returning in June 1999 to Edinburgh, Mr and Mrs C corresponded with the Council's Educational Psychological Services. Since Child C had been in mainstream education in the United States, they enquired as to the possibility of Child C attending their local primary school in Edinburgh (School A). After the Head Teacher at School A informed Mr and Mrs C about the services offered in the language unit at another primary school (School B), Mrs C wrote to the Council's Educational Psychological Services on 18 November 1998 indicating that she felt that Child C would benefit most from the environment and support offered there. The Council's Professional Assessment Group (PAG) made a formal recommendation to that effect, and Child C was formally offered a place at School B commencing in August 1999.

6. Child C began his P5 year at the language unit at School B. Mr and Mrs C stated that this was only a limited success in the first year. Child C's class was limited to seven sessions (3.5 days) of speech and language therapy per week whereas they understood all other language units in Edinburgh were offering nine sessions (4.5 days). They wrote on 12 October 1999 to a senior Educational Psychologist (Officer 1) requesting equivalent treatment for Child C.

7. The language unit at School B lost a member of staff during the first session of the 1999/2000 school year and was short staffed. Officer 1 replied to Mr and Mrs C on 28 October 1999 stating that a series of developments in Speech and Language Services was planned to take effect from April 2000, when the parents' concerns would be given careful consideration. Officer 1 promised Mr and Mrs C a more detailed response when specific plans were developed. Officer 1 did not follow up his letter. The staff vacancy in the language unit at School B persisted into 2000.

8. On 3 February 2000 the Divisional Speech and Language Therapist at the local National Health Service Trust wrote to Mr and Mrs C to apologise that Child C had not had the full benefits of the small integrated education setting opportunities with more appropriate levels of speech and language therapy input. On 23 February 2000, a senior Occupational Therapist at the Council recommended to a Consultant Paediatrician at the National Health Service Trust that suitable strategies should be considered for Child C's classroom environment.

9. In March 2000 a final Record of Needs (RON) was completed for Child C. On 23 May 2000, the Head Teacher at School B wrote to Officer 1 seeking further support for the language unit. In the following month (June 2000) Child C exhibited symptoms of anxiety and aggression.

10. In August 2000, Child C commenced his P6 year at the language unit at School B with a view to preparation for the P7 mainstream in August 2001. At the time of his Annual Review on 27 December 2000, Child C's class teacher reported an improvement in his personal and social skills and moderation of his behaviour. Child C had been integrating well at P6 on a basis of attending three times per week. As input to the Annual Review, an Education Department Psychologist proposed on 23 January 2001, that Child C complete P7 in his class at School B and then transfer to School A to repeat P7.

11. On 23 February 2001, Mr and Mrs C wrote again to Officer 1 raising concerns about the assistance being provided to Child C. They stated that there had been problems with a Special Needs Auxiliary hired by the Education Department and with Child C's temporary lack of integration within the mainstream P6 class. A teacher had been ill and there had been a lack of consistency. With an eye to the future when he was to leave P7 in June 2002, Mr and Mrs C set out what they considered Child C needed. A priority for them was the assistance of a full-time Special Needs Auxiliary trained within the Autism spectrum.

12. The letter was acknowledged by Officer 1 on 7 March 2001. Officer 1 stated that he was requesting advice from School B and from the designated Educational Psychologist and that he would write again when this was to hand. Mr and Mrs C's letter was passed by Officer 1 to Child C's Educational Psychologist who was requested to conclude discussion between the professionals and schools and provide advice on the contents. By the time of a review meeting on 27 March 2001, Mr and Mrs C felt that there were indications that Child C's placement at School B was breaking down and that his academic and social needs were not being met in his class (which he was by then attending only on a half-day basis). After the Easter break it was proposed that Child C begin a slow integration at School A on a half-day a week basis on Fridays while continuing at the language unit of School B.

13. In a further letter of 9 April 2001 to Officer 1, Mr and Mrs C stated that they believed that Child C would be best placed at School A and wanted him to

transfer. They set out his various needs which they felt should be reflected in Child C's RON.

14. By 26 April 2001, Mr and Mrs C considered the situation had deteriorated to the extent that an emergency plan needed to be implemented immediately. In two years they considered Child C had not progressed in maths (his forte) nor in written language including spelling and story writing and that he was being assigned work that he had been performing in August 1999. Mr and Mrs C complained of lack of continuity and consistency in the educational provision for Child C. That letter was not answered. The Council informed me that this was because Mr and Mrs C's letter did not specifically request a reply.

15. On 1 May 2001, Mr and Mrs C were requested to exclude Child C following an incident at School B when he threw a stone which hurt another pupil. The following day, Mr C wrote to the Head of Service (Officer 2) expressing concern about Child C's exclusion from School B and the provision previously made for him there. Mr C ended his letter by stating that it had been arranged that Child C would not return to School B. Child C was placed in P6 at School A from 4 May 2001. He received support there from the Visiting Teacher and Support Service (VTSS) and a nursery nurse for one to two hours, two days per week.

16. In June 2001, Mr and Mrs C sought advice from an independent special education advice service and an officer of that service wrote to the Council on 18 June 2001 on Mr and Mrs C's behalf intimating their intention to appeal parts of Child C's RON.

17. In August 2001, Child C started P7 at School A, initially on a limited timetable. Meetings between School A and parents were held on 6 September, 11 October and 28 November 2001. Child C had a Special Needs Auxiliary and received social group communication sessions.

18. On 16 January 2002, a planned review meeting was held. This took place in the context of problems which had occurred following Child C's return to School A after the Christmas holidays. At the end of the review meeting, the Special Needs Auxiliary resigned.

19. Child C had a difficult time in the next four weeks and a further review meeting was held on 13 February 2002. Mr and Mrs C telephoned Officer 1

expressing their concerns. Officer 1 replied on 18 February 2002, stating that he had raised Child C's present placement with the Head Teacher of School A and with his VTSS teacher. Officer 1 acknowledged the recent staffing problems but reassured Mr and Mrs C that urgent steps were being taken to recruit additional staff. In the meantime, the VTSS teacher would assist School A to see how best to extend Child C's day.

20. At a further review meeting on 13 March 2002, the possibility of Child C attending one of two mainstream secondary schools was raised. An Educational Psychologist, after discussing the limited options available, indicated that she considered a Council special education facility (School C) would be a better option.

21. Mr and Mrs C appealed the RON compiled by the Council for Child C in terms of section 63(1) (b) of the Education (Scotland) Act 1980 to Scottish Ministers. An Education Adviser to Scottish Ministers was appointed to consider the appeal. In paragraph 3.8 of her report, dated 14 May 2002, the Education Adviser stated:

'Overall, it is the view of the adviser that [Child C] continues to require continuing support to help him achieve a satisfactory rate of progress in all areas. [Mr and Mrs C] have contributed significantly to his education and this has been acknowledged by the range of professionals The largest part of [Child C]'s education provision is carried out by [Mrs C] in the family home and [Child C] has very limited time in school to help him interact and progress socially. In the adviser's opinion, the education authority should review this situation as a matter of urgency.'

22. On 1 May 2002, Officer 1 wrote to Mr and Mrs C offering Child C a place at School C from the beginning of the August 2002 session. Officer 1 recognised that this offer might not meet Mr and Mrs C's expectations. It had been made on the basis of extensive multi-disciplinary discussions. Officer 1 assured Mr and Mrs C that the suitability of the placement would be regularly reviewed in consultation with them. Mr and Mrs C were informed that they could discuss any aspect of Child C's future education with the assigned Educational Psychologist and that it was open to them to make a placing request for Child C to attend the school of their choice.

23. On 10 June 2002, Mr and Mrs C wrote to Officer 1 stating that for the present they considered they had no alternative but to accept the offer of

School C, but that they had reservations at the lack of specialist staff dealing with children within the Autism spectrum, the lack of speech/language therapy, occupational therapy and the lack of an appropriate peer group. Officer 1 responded to these individual points in a letter of 18 June 2002. A new designated Educational Psychologist was announced at a transition meeting on 19 June 2002. In a letter of 25 June 2002, Mr and Mrs C indicated to Officer 1 that they were unsure that part-time education at School C would prepare Child C for further education or for job placement. After consultation with colleagues, Officer 1 replied on 22 August 2002 informing Mr and Mrs C that the Head Teacher at School C had confirmed it was her intention to implement full-time education for Child C as soon as this could be achieved.

24. On 20 August 2002, Child C started at School C on a half-day daily basis. Within his first ten days, because of his behaviour, he was physically restrained on four occasions. On 26 August 2002, Child C was restrained and detained in a soft (padded) room for some minutes. On 26 August and 2 September 2002, Child C was sent home. Mr and Mrs C were informed by letter on 2 September 2002 that Child C had been excluded by the Head Teacher on grounds of indiscipline. Mr and Mrs C were invited to meet with the Head Teacher. They were also informed that they could appeal the exclusion to the Council's Appeals Committee under subsections 28H and 28D of the Education (Scotland) Act 1980 (as amended).

25. On 3 September 2002 Mrs C, concerned that what she considered to be essential arrangements for the transition to School C had not been put in place, spoke with the Council's Pupil Support Services and sought the presence of an Educational Psychologist at their meeting with the Head Teacher, scheduled for 10 September 2002. She informed Officer 1 that she would be attending the meeting with representatives from a special education advice service (paragraph 16) and that they would also be submitting an appeal against the exclusion. (The appeal to the Council's Appeals Committee was subsequently unsuccessful.)

26. At the meeting on 10 September 2002, Mrs C requested an outreach teacher during the interim period of Child C's exclusion to enable Mr and Mrs C to provide for the continuation of Child C's education. The Head Teacher agreed to follow this up.

27. On 11 September 2002, Mr and Mrs C were advised of the outcome of their appeal under section 64(1) (c) to Scottish Ministers (paragraph 21) and Child C's RON was amended.

28. Child C was not re-admitted to School C following the meeting. Mr and Mrs C understood that no entry on Child C's school file regarding the exclusion would be made until after a multi-agency meeting was held. That meeting was delayed but was eventually arranged for 9 October 2002. On 7 October 2002, the Head Teacher wrote to Mr and Mrs C informing them that Child C's exclusion from School C with effect from 2 September 2002 was to be entered on Child C's school file.

29. The meeting on 9 October 2002 was attended by Mr and Mrs C, the Head Teacher, an Educational Psychologist, and two representatives from the special education advice service. Discussion took place on how to aid Child C's transition into School C on a full-time basis. The minute records that it was agreed that an additional full-time teacher, experienced in working with pupils with challenging behaviour, would be required to work with pupils and staff in S1 and in particular with Child C. The Head Teacher was remitted to write to Officer 1 with the recommendations for his consideration in order that Child C should be able to return to School C as soon as possible and did so the next day.

30. On 15 October 2002, Mr and Mrs C wrote to Officer 1 stating that they considered that the minuted recommendation (for an additional member of staff) was different from what was agreed at the meeting. Their understanding had been that the teacher needed would be expert trained in Autism spectrum disorders and that this teacher would be solely for Child C.

31. On 29 October 2002, a Council social worker assigned to deal with children with disabilities wrote to Officer 1 asking for home support since Mrs C was struggling to cope with Child C after his exclusion from School C. She also asked Officer 1 when it was likely Child C would be re-admitted to School C in order that Social Work could plan appropriate intervention.

32. On 1 November 2002, Officer 1 wrote to Mr and Mrs C to inform them that arrangements were being made to appoint an additional full-time teacher at School C with relevant experience to enable School C to provide additional

support to S1 pupils and staff and to Child C in particular. He stated that these arrangements were being progressed as quickly as possible.

33. According to Mr and Mrs C, in the period subsequent to 2 September 2002 when Child C was excluded, he received no formal teaching, no speech and language therapy, no occupational therapy from the Council and no interaction and social time with other children. The outreach teacher they requested to attend their home did not materialise (paragraph 26).

34. On 20 November 2002, Officer 1 responded to the social worker's letter of 29 October 2002, stating that a condition for Child C's return to School C was that another teacher should be engaged to support him in class. Officer 1 confirmed that the Education Department had advertised the post. On 9 December 2002, Officer 1 updated Mr and Mrs C by letter. He stated that it had not been possible to recruit a suitable teacher and that the post had been re-advertised. He expected an appointment to be made by the end of that month. The Head Teacher, following consultation with Social Work, proposed to engage a voluntary organisation (the Activity Group) to provide a social education, learning and leisure programme on a temporary basis to help Child C prepare for his return.

35. Mr and Mrs C attended a meeting at School C on 19 December 2002. It was agreed then that an Activity Group programme for Child C would commence on four afternoons per week, on a month-to-month contract. The minute records that Mr and Mrs C asked that speech and language therapy, which had ceased in June 2002 at School B, should resume. The Head Teacher agreed to speak to the speech and language therapists in order that this might take place. (A speech therapist, however, wrote to Mr and Mrs C on 27 January 2003 stating that it was not possible to provide outreach speech therapy.)

36. Mr and Mrs C wrote again to Officer 1 on 6 January 2003 and spoke to the Head Teacher about the recruitment process. On 17 January 2003, the Head Teacher replied to say that an additional teacher had been appointed to work in S1 and it would, therefore, be possible for Child C to return to School C on 3 February 2003. This appointment was confirmed by Officer 1 in a letter of 21 January 2003.

37. In preparation for Child C's return to School C, Mr and Mrs C attended a meeting with the Acting Head Teacher and the new teacher on 30 January 2003. They pointed out that Child C had had no occupational therapy while out of school and they had had to obtain and pay for a private occupational therapy programme. Child C returned to School C on 4 February 2003.

38. Several meetings were held thereafter at School C. On 20 February 2003, Mrs C reported that Child C had indicated to her that he was not happy at School C. With a further PAG planned to take place in three weeks, Mr and Mrs C questioned whether School C was the right place for Child C.

39. Meanwhile, Mr and Mrs C had at their own expense had Child C assessed over six days in January 2003 at School D following which he had been offered a place with a start date of September 2003. On 20 March 2003, Mr C wrote to Officer 1 stating that he and Mrs C wished to make a formal placing request for Child C to attend School D. Receipt of the placing request was acknowledged on 3 April 2003.

40. Following a further meeting on 24 March 2003, it was proposed to extend Child C's attendance at School C from 31 March 2003 to two hours 50 minutes per week and from 22 April 2003 to four hours 20 minutes. The Activity Group were at that time supporting the family with 16 hours hands-on and four hours administration time per week.

41. On 28 March 2003, Mrs C wrote to the Minister for Education and Young People, making a complaint under section 70 of the Education (Scotland) Act 1980, as she believed that the Council was not upholding its legal duty to provide full-time education for Child C. (This appeal was later rejected in September 2003 on the grounds that Child C had by then commenced attendance at School D.)

42. On 24 April 2003, Mrs C asked the Council for copies of all the interagency assessments prepared in respect of Child C. She stated that once she was in receipt of these she would be happy to send the Council a copy of the assessment reports they had received from School D. She indicated that she looked forward to receiving a written response to the placing request by 15 May 2003.

43. Officer 1 responded on 6 May 2003, stating that he had requested an interagency review to assist in planning for Child C's future needs. This process would inform a co-ordinated approach including matters associated with Child C's RON and would assist in giving consideration to Mr and Mrs C's request for his placement at School D. Officer 1 indicated that all of the relevant professional reports and advice would be taken into account alongside the submission from School D.

44. On 2 June 2003, Mr and Mrs C, not having had a response to their placing request of 20 March 2003, enquired about the process of appealing to the City of Edinburgh (Placing in Schools) Appeals Committee.

45. Prior to the interagency meeting planned for 4 June 2003, Officer 1 obtained by fax from School D on 3 June 2003 confirmation that they were prepared to offer Child C a place and details of the fees they charged.

46. The interagency meeting on 4 June 2003 was informed that Child C had been excluded from School C. The meeting decided that his class teacher would provide home teaching with him for one hour in the morning of school days commencing on 16 June 2003.

47. An officer in the Council's Pupil Support Services requested and received from School D their assessment of Child C. When Mrs C became aware that they had obtained that assessment she wrote pointing out that Pupil Support Services had circumvented the process that she had set out and had obtained Child C's assessment without her permission.

48. On receiving the minutes of the interagency meeting of 4 June 2003 on 24 June 2003, Mr and Mrs C expressed their concern that the report of a National Health Service psychiatrist had not been mentioned. The psychiatrist had recommended that local resources had been unsuccessful in helping Child C academically and psychosocially and that an appropriate residential placement should be sought for him as a matter of urgency. The report formed part of the information considered in dealing with the placing request for School D.

49. On 4 July 2003, the Council's Special Schools and Social Inclusion Manager wrote to Mr and Mrs C informing them that the placing request had

been agreed to and that he would be writing to the Head Teacher of School D to confirm that funding had been agreed for Child C.

50. Child C commenced attending School D in September 2003 but returned home to spend Christmas and New Year at home with Mr and Mrs C. Shortly after he returned to School D, a review team from the Council visited School D to update themselves on five Edinburgh children placed there. This visit was planned in advance but Mr and Mrs C only learned of the visit in a letter they received from the Council on 16 January 2004.

51. Mr and Mrs C complained to the Director of Education on 21 January 2004 that a professional had visited and spoken to Child C without their permission. They also at this time submitted a complaint about Officer 1's alleged lack of professionalism. It was the treatment of these two complaints which were initially raised with this office.

52. Receipt of the complaint against Officer 1 was acknowledged on 27 January 2004 and was passed to the Head of Pupil Support Services who, without seeking further clarification or expansion from Mr and Mrs C, wrote on 26 February 2004 denying the suggestion that Officer 1 had acted inappropriately or unprofessionally. The Council have told me that while it was Education Service policy to attempt to reach a local solution in the first instance, it would not have been appropriate in the circumstances to ask Officer 1 to seek a local solution.

53. Mr and Mrs C were not satisfied with the response to their complaint about Officer 1. On 12 March 2004, they were invited to raise their complaint with the Education Service's Advice and Conciliation Service which they did on 17 March 2004. The complaint was passed to the Principal Officer (Officer 3) for reply. She invited Mr and Mrs C to meet with her to discuss a way forward. In a letter of 29 March 2004, Mr and Mrs C declined a meeting and stated that they would prefer to have their points addressed in writing. Officer 3 did not ask them to expand on their grievance about Officer 1. After meeting with Officer 1 and Officer 2, Officer 3 wrote to Mr and Mrs C on 29 April 2004.

54. Officer 3's response of 29 April 2004 to Mr and Mrs C reiterated the response of 26 February 2004 (paragraph 52), and in addition responded to Mr and Mrs C's other letter of complaint of 21 January 2004.

55. Mr and Mrs C were dissatisfied and submitted a form of complaint to the Ombudsman's office on 19 May 2004 setting out 17 complaints. The complaints as set out therein had not been previously articulated and submitted to the Council and Mr and Mrs C were advised by my former colleague that these complaints would require to first be made to the Council.

56. On 16 June 2004, Mr and Mrs C wrote to the Chief Executive enclosing their initial letter to the Ombudsman of 19 May 2004.

57. The Chief Executive replied on 24 June 2004 to Mr and Mrs C stating that he was satisfied that their complaint had received appropriate attention within the Council in terms of agreed procedures within the Education Service. Mr and Mrs C responded in a further letter of 6 July 2004 in which they requested a meeting with the Chief Executive.

58. In the absence of the Chief Executive, the Director of Corporate Services as Acting Chief Executive replied to Mr and Mrs C on 12 July 2004. He stated that he did not consider a meeting with the Chief Executive would advance matters.

59. Mr and Mrs C thereafter returned to the Ombudsman's office with their complaint. At my request they provided me with relevant correspondence. Following consideration of that information I made a detailed enquiry of the Council on 28 September 2004.

60. The Council Secretary responded to my enquiry on 27 October 2004. He stated that the complaint was complex and suggested that the Education Department was willing to make its files available and to provide a senior officer to review the paperwork with Mr and Mrs C and myself.

61. After obtaining further information from Mr and Mrs C, I prepared a summary statement of their interaction with the Council. Subject to suggested amendments, they confirmed that this provided an accurate narrative.

62. On 14 February 2005, I provided the Council with the amended summary and invited them to use this as background in order to respond to the 17 points of complaint. At the Council's request, I also sought Mr and Mrs C's written response as to whether they were prepared to visit the Council to review the Education Department's file. Mr and Mrs C in a letter of 21 February 2005

reiterated their previous preference that the Education Service address their complaints in writing.

The Council's response to the complaints

63. The Council Secretary informed me on 20 April 2005 that the correspondence had been passed to the newly designated Director of Children and Families for a response. The Children and Families Department sought Mr and Mrs C's agreement to release documents before responding substantively on 2 May 2005 on the points. For the purpose of this revised report, I revisited the original 17 points of complaint, decided not to continue my consideration of four points, and grouped the remainder into five broader heads of complaint.

(a) The Council failed in their statutory duty to offer appropriate full-time education to Child C suitable for his needs

64. The Council stated that the RON opened in March 2000 was the overarching plan for Child C. The review meeting at School B on 23 January 2001 concluded that Child C's Individual Education Plan (IEP) targets had been met. These were referred to at the school review at School A. The Education Department considered that they made reasonable efforts including the funding and provision of additional adult support to try and maintain Child C's full-time attendance. Child C's special educational needs evolved over time and the Education Department made reasonable efforts to plan for alternative provision as required to meet those changing needs. The Council maintained that Child C achieved progress, measurable against the 5-14 curriculum levels and against his IEP over the time he attended School A, School B and School C and that this was demonstrated clearly in the school reviews.

(a) Conclusion

65. Child C had a RON completed in March 2000 which was amended on appeal in 2002. A review meeting at School B on 23 January 2001 concluded that Child C's IEP targets had been met. If a revised IEP was relevant for Child C that point should have been raised by Mr and Mrs C at an appropriate review meeting. The Council maintain that the RON did not insist on one-to-one support but at times something approaching this degree of support would in my view have been a practical necessity. It is clear that, for various reasons which were not fully within the control of the Council, Child C did not get full-time education between his return to Edinburgh in June 1999 and his placement at

School D in September 2003. Child C was excluded because of his challenging behaviour and could not reasonably return until School C obtained a suitable additional member of staff. The Council appear to me to have made reasonable efforts to recruit. On reflection, given the appeals mechanisms available to Mr and Mrs C as parents, both to the courts and Scottish Ministers, it does not in my view fall to the Ombudsman to pronounce on this head of complaint. I, therefore, propose to make no finding on this complaint. I believe, however, that the report testifies to the extreme difficulties Mr and Mrs C faced over an extended period and their desire to achieve the best possible education outcome for Child C. I believe that the report raises important issues with regard to suitable education provision which the Council should review.

(b) The Council failed to provide Mr and Mrs C as parents with adequate and sufficient information to make an informed choice of school for Child C and to ensure smooth transitional arrangements and liaison between schools

66. In response to this head of complaint, the Council maintained that there had been a great variety and number of contacts with Mr and Mrs C and information passed to them. This, they felt, was not consistent with the allegation made.

(b) Conclusion

67. Mr and Mrs C were concerned that their suggestions to smooth the transition from School B to School A (paragraph 16), and the subsequent move to School C (paragraph 27) were not properly heeded, and that Child C experienced difficulties which might have been avoided. It is clear that the Council were not able to meet all Mr and Mrs C's wishes. It is also clear that difficulties arose at an early stage in each of the three schools. It is particularly unfortunate that, within ten days of commencing at School C, Child C was being restrained, and only shortly thereafter excluded. I see no evidence that information was purposely withheld from Mr and Mrs C. I cannot say whether, had it been possible to implement the suggestions made by Mr and Mrs C, the transition for Child C would have been smoother. While I believe that Mr and Mrs C had a clearer vision for the services Child C needed, on balance, I am unable to uphold this complaint.

(c) The Council failed, following Child C's exclusion from School C in September 2002, to take timely and appropriate steps to deal with the exclusion and to support Child C and Mr and Mrs C

68. The Council stated that they did not consider that the delay in entering Child C's exclusion in the School C record was significant or was detrimental to Child C. The letter of exclusion was sent to Mr and Mrs C on 7 October 2002 and was provided to the exclusion appeal hearing on 17 December 2002. The multi-agency meeting on 9 October 2002 had discussed the circumstances of the particular event, the restraining of Child C, and set out the requirements for Child C's return. The Head Teacher explained the circumstances to Mr and Mrs C in a letter of 15 October 2002 in combination with her report to the appeal hearing. The Education Department was not responsible for providing speech and language therapy or occupational therapy but these two services provided considerable support in liaison with staff employed by the Education Department. The Education Department funded additional adult support provided variously by a nursery nurse, learning assistants, a VTSS teacher, the Activity Group and a special needs teacher. In the period after Child C's exclusion from School C, the difficulty in meeting his needs arose from Child C's behavioural difficulties and these could not be adequately or safely addressed by a VTSS teacher in an environment outside school. Very regrettably, there had been a delay in appointing an additional teacher to provide support at School C due initially to the lack of suitable candidates. Arrangements were made to provide support from the Activity Group pending the appointment of the additional teacher following re-advertisement of the post.

(c) Conclusion

69. The initial delay from 2 September 2002 to 7 October 2002 in sending the letter of exclusion was significant in that it prevented any appeal being lodged. The exclusion appeal hearing held eventually on 17 December 2002 might, therefore, have been held earlier. Since the appeal was dismissed, it had little practical consequence. In the initial period of exclusion from 2 September 2002 to 19 December 2002 Mr and Mrs C were left to their own devices to fend for Child C. The situation was alleviated to an extent by the respite arrangements offered by the Activity Group from late December 2002. I believe that the Education Department could have done more in the circumstances particularly where exclusion from School C had an important bearing on the provision of therapies from other agencies which Child C was recorded as needing. Plans for Child C's return to School C were thwarted in particular by the Council's inability to recruit an additional full time teacher at School C. It is entirely

understandable that Mr and Mrs C considered the Council had failed them. Child C did not return to School C until 4 February 2003, a period of over five months from the date of his exclusion. Mr and Mrs C had for a period exceeding three and a half months to provide Child C's education. This must have put great pressures on the family and Mrs C in particular. I uphold the complaint about the lack of service provided by the Council at that time.

(c) Recommendation

70. The Ombudsman recommends that the Council review the problems confronted by Mr and Mrs C in securing appropriate suitable education to meet Child C's needs.

(d) The Council failed to deal in an appropriate and timely manner with Mr and Mrs C's placing request for Child C to attend a residential school in England

71. The Council stated that section 28A (i) a) of the Education (Scotland) Act 1980 (as amended) requires that the managers of the school for which a placing request is made must be willing to admit the child in order for the placing request to be competent. While Officer 1 had requested, in reply to Mr C's letter of 20 March 2003, that School D's offer be forwarded, the offer had not been obtained until 3 June 2003 when the Education Department requested it directly from School D. The Education Department granted the request on 4 July 2003. Since the term at School D did not commence until September 2003, in the Council's view, there had been adequate time to make the transition arrangements. The Council did not consider it reasonable to seek to separate the issue of School D's willingness to offer a place from their assessment of School D's ability to meet Child C's special educational needs. The Education Department had a statutory duty to ensure that any placement they funded was suitable for meeting a child's special educational needs. The Council considered their actions were reasonable and were not detrimental to the interests of Mr and Mrs C or Child C. In addition, School D undertook to obtain Mrs C's permission before sending the assessment.

(d) Conclusion

72. Mr and Mrs C took Child C to England for a six day residential assessment at School D which they paid for. Despite thereafter making a placing request, they imposed a condition on releasing the assessment report they obtained from School D namely that assessments sought by the Council be first shared with them. The Council took over three months to deal with the placing request.

That delay was unfortunate. I consider, however, that that period might have been shortened if the offer from school D and the assessment of Child C had been furnished by Mr and Mrs C with the request. I can readily understand why by March 2003, Mr and Mrs C's trust in the actions of the Education Department had been eroded. I partially uphold this aspect of the complaint.

(e) The Council dealt inappropriately with two complaints Mr and Mrs C submitted

73. The Council supplied me with a synopsis of correspondence which, they maintained, demonstrated that the majority of the considerable correspondence was answered within a reasonable time either by oral response or in writing. The main exception was the second letter of complaint of 21 January 2004. An apology had been sent on 26 October 2004 to Mr and Mrs C for the delay in answering that letter. With regard to a concern expressed by Mr and Mrs C about a possible breach of confidentiality, the Council maintained that Officer 3 and Officer 2, as senior officers of the Education Department, shared the same corporate duty and obligation to respect confidentiality.

(e) Conclusion

74. The failure by the Council in dealing with one of the two letters of complaint made by Mr and Mrs C on 21 January 2004 has been acknowledged by the Council and an apology tendered on 26 October 2004. However, the Council failed to address the complaint made on 16 June 2004 until after the Ombudsman's office became involved. Most of the 17 issues raised had not previously been addressed by the Council. Had there been an attempt to deal substantively with those points initially, then the Ombudsman's office's further involvement might have been unnecessary. I partially uphold this complaint.

(e) Recommendations

75. The Ombudsman considers that the report highlights the difficulties in providing for a child where special educational needs are compounded by behavioural difficulties, and the frustrations experienced by parents striving to achieve the best possible provision of education services to meet their child's needs. While the Council's Education Department generally had proper regard to their obligations, the lack of local options available undoubtedly had an important bearing on their responsiveness. The Ombudsman recommends that the Council:

- (i) apologise to Mr and Mrs C for their failures identified in the report; and

- (ii) review the implementation of the Council's complaints procedures particularly with regard to services for children and young people.

The recommendation at paragraph 70 is also relevant here.

76. The Ombudsman asks that the Council notify her when the recommendations have been accepted

Explanation of abbreviations used

Mr and Mrs C	The complainants
Child C	Mr and Mrs C's son
School A	The local Primary School
School B	A Primary School with a language unit
School C	A Special Needs School
The Council	The City of Edinburgh Council
School D	A residential Special Needs School in England
PAG	The Council's Professional Assessment Group
Officer 1	The Council's Senior Educational Psychologist and subsequently Professional Services Manager
RON	Record of Needs
Officer 2	Head of Service
VTSS	Visiting Teacher and Support Service
The Activity Group	Voluntary organisation that helped Child C prepare to return to School C
Officer 3	Principal Officer