

Case 201103092: Scottish Government Learning Directorate

Summary of Investigation

Category

Scottish Government: Education; complaints handling

Overview

The complainant (Mr C) complained to the Scottish Government Learning Directorate (the Directorate) about the manner in which the Registrar for Independent Schools (the Registrar) conducted an investigation into Mr C's request that a notice be served on Mr C's son (Master C)'s school (the School) under section 99 of the Education (Scotland) Act 1980. Mr C made the request following his dissatisfaction about the manner in which the School had conducted an investigation about an allegation of sexual assault.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Registrar unreasonably failed to undertake a thorough investigation of Mr C's complaint by not consulting with the Social Work Department or consulting with Mr C about the report the Registrar had prepared for the Scottish Ministers (*upheld*); and
- (b) the Registrar's report was based on factually incorrect information (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Directorate:	<i>Completion date</i>
(i) ensure that written procedures are in place for investigating and reporting to Ministers on a request for a section 99 notice to be served;	17 October 2012
(ii) ensure that any recommendations which are made by the Registrar in relation to a request for a section 99 notice to be served are notified to all relevant parties;	17 October 2012
(iii) draw the findings of this investigation to the attention of the Registrar; and	3 October 2012

(iv) apologise to Mr C and Master C in relation to the failings identified within this report.

3 October 2012

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

Main Investigation Report

Introduction

1. Mr C's son, (Master C) previously attended an independent school (the School). In August 2009 Mr C contacted the School in relation to an alleged incident of sexual assault against Master C by another pupil at the School (Child D), which was alleged to have occurred at some time during the 2008/2009 school year. Mr C had various other concerns about Child D having bullied Master C throughout his time at the School.

2. Thereafter, Mr C had concerns about the manner in which the School dealt with the allegation of sexual assault. In particular, he stated that the School had failed to refer the matter to the relevant Social Work Department (the Department) appropriately (they had done so by telephone), and had further failed to fully advise the Department of the circumstances of and background to the alleged incident. Mr C said the School had improperly taken the decision not to investigate the allegation, and that they were only advised not to investigate by the Department because the School had not provided the Department with all of the relevant information. Mr C was also concerned that the School's response to his complaint had been prejudiced, due to the fact that Child D's father (Mr D) was a member of the School's Board of Governors.

3. Mr C and his solicitors (the Solicitors) engaged in correspondence with senior staff members at the School (and thereafter the School's solicitors) throughout the remainder of 2009. Master C was assessed by a psychologist, who produced a report on his investigations in December 2009. A multi-disciplinary Child Protection Case Discussion was held on 27 January 2010 by the Department, where it was agreed that the allegation would not be investigated. Mr C stated that this meeting was only held following his Solicitors' intervention by contacting the Department on Mr C's behalf.

4. On 17 March 2010, the Solicitors wrote to the Secretary of State for Scotland seeking that a notice be served on the School under section 99(1A)(aa) of the Education (Scotland) Act 1980 (the Act) on the grounds that Master C's welfare as a pupil there was not adequately safeguarded or promoted. Mr C and Ms B, (Master C's mother), wrote to the Registrar for Independent Schools (the Registrar) on 28 April 2010 and to a member of staff (Officer 1) at the Directorate on 15 June 2010, providing background and supporting information about the matter. On 14 September 2010, the Registrar

wrote to the Solicitors advising that the section 99 notice request under the Act had been declined. The Registrar advised that the Scottish Ministers (the Ministers) had considered the request and, to assist in this consideration, Her Majesty's Inspectorate of Education (now Education Scotland, but referred to as HMIE throughout this report) had undertaken a visit of the School, and had provided a report relevant to that visit. The Registrar's advice to the Ministers summarised the findings of the HMIE inspection, and attached the full inspection report as an annex. The Registrar concluded that, having considered the information provided by Mr C and the advice received from HMIE, there was no evidence to support the serving of a section 99 notice on the School. The Registrar had sought the Minister's agreement to decline the request for the notice; at the same time, relevant recommendations contained in the HMIE report were passed to the School for action.

5. Following the decision, Mr C met with the Registrar and Officer 1. He stated his position was that the School had not provided the Department with the correct version of events, had withheld documents and had removed relevant documents from the records, and that on that basis the report prepared by HMIE used in the consideration of the request was based on inaccurate information. The Registrar's position was that the evidence did not support the serving of a section 99 notice.

6. The Registrar wrote to Mr C in regard to his continuing concerns in November 2010 and January 2011. He stated that, in line with normal procedure, the correspondence received from the Solicitors had been shared with HMIE; that, given the seriousness of the allegation, a visit by HMIE was arranged to assist in consideration of the request for action against the School; and explained that HMIE had no locus in investigating whether the incidents complained of took place. The Registrar said HMIE's focus was on whether the School's procedures for complaints and child protection were appropriate and had been implemented effectively in this case, and that the conclusion had been that they were and had been, with minor recommendations for improvement having been identified. Mr C went on to make several enquiries as to whether he could meet with the HMIE Inspector (the Inspector) who had prepared the report for the Ministers, but this was not authorised. This was the subject of a previous complaint Mr C made to my office in March 2011 (our reference 201004920).

7. Mr C explained he wanted a satisfactory explanation and justification of the Registrar's request to the Ministers to decline the section 99 notice request. Mr C said the Registrar's advice referred to factually incorrect information based on a 'misleading and incomplete' report as prepared by the HMIE Inspector and that he had provided further evidence to support this position, but that this had not been considered by the Registrar. Mr C submitted a formal complaint to the Directorate on this basis on 7 March 2011. Mr C's complaint was initially considered by Deputy Director 1, as per the Scottish Government's three stage complaints procedure. Deputy Director 1 responded on 14 April 2011. Mr C was dissatisfied with this response and his complaint was considered by Deputy Director 2, and thereafter by the Director of the Directorate (the Director), with her involvement in the matter concluding on 12 October 2011. The findings at each stage of the procedure were that the decisions made, and the grounds on which those decisions were made, were reasonable.

8. Mr C remained dissatisfied and brought the matter to my office. He explained how the entire experience had been an exceptionally difficult and distressing one for him and his family, and in particular for Master C. He wanted an apology to himself and Master C, both at a senior level within the Directorate and from the Registrar. He wanted consideration to be given to recommendations that the Registrar's office look again at their process for investigating complaints about independent schools and, if necessary, to revise and improve that process.

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

- (a) the Registrar unreasonably failed to undertake a thorough investigation of Mr C's complaint by not consulting with the Department or consulting with Mr C about the report the Registrar had prepared for the Ministers; and
- (b) the Registrar's report was based on factually incorrect information

Investigation

10. In order to investigate Mr C's complaints, my complaints reviewer considered and reviewed all of the correspondence provided by Mr C and the Directorate. For background information, this included original correspondence pertaining to the matter from 2009, but the investigation focused on the correspondence pertaining to and following the Registrar's decision of 14 September 2010. My complaints reviewer also obtained further information from the Directorate in April 2012, and considered the relevant sections of the Act.

11. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Directorate were given an opportunity to comment on a draft of this report. The investigation was limited to reviewing the actions of the Registrar in considering whether a section 99 notice should be served on the School, and the subsequent responses of the Directorate to Mr C's complaints about the decision.

(a) The Registrar unreasonably failed to undertake a thorough investigation of Mr C's complaint by not consulting with the Department or consulting with Mr C about the report the Registrar had prepared for the Ministers

12. One of the main aspects of Mr C's initial complaint following the Registrar's advice and the decision of the Ministers was that the School had failed to appropriately share information about the allegation with the Department. Mr C challenged the informal way in which the allegations had been reported to the Department (by telephone), and said that the subsequent advice of the Department (ie that no action/further investigation should be instigated in relation to the allegations) was only given because the School had not shared all of the relevant information with the Department. This included the full background of the alleged perpetrator, the full history between Master C and Child D, and the contents of a handwritten note prepared by Ms B on the basis of her discussion with Master C about the incident. Mr C described the School's 'lack of written referral ... as a conscious and deliberate decision on their part and contravenes protocol' and that it did not comply with national guidelines.¹

13. Mr C referred to the report prepared by the Inspector which had stated in relation to the advice given that 'the [Department] would have its own records of this phone call contact and could corroborate the advice given' and 'the Registrar may wish to seek information direct from [the Department] concerned about their records of the communication with [the School] and the minute, shared with the Children's Reporter, of the subsequent multi-agency meeting

¹ The Scottish Government: *The National Guidance for Child Protection in Scotland* [2010] – this states that sharing appropriate information is an essential component of child protection and care activity. It outlines a number of general principles and in particular states that when information is shared a record should be made of when it was shared, with whom and for what purpose, in what form and whether it was disclosed with or without informed consent.

held in January 2010'. Mr C referred to the fact that the Director had confirmed to him in an email on 12 October 2011 that the Registrar did not seek corroboration of the School's version of events from the Department. Overall, Mr C was dissatisfied that the Registrar had chosen not to contact the Department directly to clarify their contact with the School in relation to the incident.

14. Mr C was also dissatisfied that the HMIE report referred to by the Registrar did not indicate that the multi-disciplinary Child Protection Case Discussion held in January 2010 was only held as a result of his Solicitors contacting the Department, rather than due to contact from the School. Mr C explained the purpose of raising these issues was that 'it puts the actions of the school in a different light when viewed in context'. Mr C noted that following this meeting in January 2010, a referral was made to the police and the Children's Reporter.

15. Mr C challenged the Registrar's decision not to meet with him prior to the issuing of the decision. Mr C said such a meeting would have allowed him the opportunity to detail the aspects of the School's records which he considered to be inaccurate (these details shall be considered within Complaint b). In his letter to Deputy Director 1 of 2 April 2011, Mr C stated that 'the Registrar should have interviewed us and [the Department] to properly establish the full picture'. Mr C said he found it:

'truly incredible that the party accused of impropriety is the sole source of information from which advice to Ministers is drafted and this is something that should be revised ... [the Registrar] would have been acting reasonably if he had sought information from [the Department], but he chose not to do so. This is arguably negligent'.

Mr C added that he could not help but think that 'if [the Registrar] had been more diligent at the outset then this matter would have been resolved properly'. Mr C's position was that the impact of this was that the Registrar had not given 'careful consideration' to matters as he had stated, and had never been able to give an adequate explanation nor justification for his decision.

The Directorate's response

16. In a letter to Mr C of 18 November 2010, the Registrar stated 'I would like to assure you that [the HMIE Inspector] was in possession of all the correspondence submitted by your solicitors, [Ms B] and yourself when undertaking the visit to [the School]. Further, that the correspondence was

used in the formulation of the advice to the Ministers'. The Registrar also added 'HMIE does not consider that it could add any advice further to that which has already been provided to Ministers'.

17. The Registrar also reiterated during correspondence with Mr C that it was not appropriate for him to comment upon decisions made by the Department and that 'it was a matter for [Mr C] to raise issues with them directly'.

18. In Deputy Director 1's response of 14 April 2011 to Mr C's complaint, he did not specifically address Mr C's position that neither he nor the Department had been consulted by the Registrar prior to the making of his decision, although he did state 'I do not think that because HMIE found nothing that lent credence to your allegations, that the Government should then have decided to disbelieve them [the School] and seek a second view of the school's actions'.

19. In Deputy Director 2's response of 25 May 2011 to Mr C's complaint, she stated that:

'you expressed concern that the initial contact made by the school to [the Department] was not sufficiently robust. Part of your justification of this statement is that when you contacted [the Department], a child protection investigation was launched. On the available evidence, I think it was reasonable for HMIE to conclude that the school provided sufficient information to [the Department] which reflected its understanding of your son's situation and how it could best meet its duty for the care and protection of its school community'.

She also stated that 'HMIE considered the process followed by these agencies and concluded that they do not require significant amendment'. Deputy Director 2 also said that a recommendation for the improvement in relation to communication between the School and its partners had been identified, and was satisfied that this had been acted upon thereby adequately addressing any concerns on this issue. Deputy Director 2 also noted that:

'relevant communication to you could have been clearer with regard to HMIE's responsibility in relation to child protection matters ... this might have provided some reassurance ... even if you did not agree with HMIE's evaluation of the school's approach.'

Deputy Director 2 also reiterated that HMIE's approach was not to investigate individual cases.

20. Deputy Director 2 went on that although the Registrar had not met with Mr C prior to making his decision, he had taken into account his documentation, and had met with 'relevant colleagues' prior to providing advice to the Ministers, as well as using the findings in the HMIE report.

21. Mr C raised additional points by email and Deputy Director 2 responded to these in a further letter (dated 'June 2011'). She said that HMIE had made clear that the incident reporting process needed to be improved and that a recommendation had been made to the School on that basis. The School had also written to the Registrar on 5 April 2011 advising of the steps taken to comply with the recommendations made.

22. Mr C asked Deputy Director 2 for clarification of what steps had been taken following the Registrar's suggestion that improvements were made to the communications process in his department. She responded in a letter of 1 August 2011 that:

'improved written communication of the Registrar's role will be provided to all people making a complaint at the start of the process ... and that all people who have a meeting in relation to a complaint will receive a letter explaining the Registrar's role ... immediately following that meeting.'

23. The final stage of the process was for Mr C's complaint to be reviewed by the Director. Mr C wrote to the Director on 5 August 2011 with a number of specific questions highlighted which he wished addressed. The Director responded on 19 August 2011. She apologised that Mr C had remaining concerns and acknowledged the distress he and his family had experienced. She stated she found no case for action against the School or the Registrar, and had 'nothing further to add to the extensive correspondence' between [Mr C] and her colleagues, given their responses had been 'diligent and thorough'.

24. The Director undertook discussions with colleagues about Mr C's case, including the Deputy Director of Children's Rights and Wellbeing, who suggested potential changes to governmental guidance about child protection, and that communication could take place between HMIE and the Care Inspectorate (SCSWIS) to discuss a 'sharper focus on child protection through inspection'.

25. My complaints reviewer asked the Directorate for some additional information in April 2012. She enquired as to whether the Directorate maintained written procedures to be followed by the Registrar when investigating a request for a section 99 notice to be served on a school. Written procedures do not appear to be in place, but my office was provided with general information about the steps which would be taken on receipt of a request, which include the seeking of legal advice and consultation with HMIE. The Director also confirmed that:

'HMIE examined all relevant exchanges with the school, including the written confirmation of [the Department]'s advice to the school, in drawing together their report. The Registrar drew on HMIE's report in providing advice to Ministers but did not, I understand, ask for sight of the supporting documentation that underpinned that report.'

The Director noted that:

'the conclusions of each of their reviews had been that the Registrar had acted fairly and fully in discharging his responsibilities within the legislative parameters of the Act ... and that it would not be expected that any additional information would be sought or required from [Mr C] over and above that supplied from his correspondence with the Registrar. The Registrar, through the professional advice received from HMIE, was satisfied that the school had exchanged information with [the Department] and that [the Department] had been involved, and had already investigated and reported on the case, prior to [Mr C] submitting a request for action under section 99 of the Act.'

(a) Conclusion

26. In reaching a decision on this complaint, I have considered Mr C's position and that of the Directorate. Section 99 of the Act states that 'if at any time the Secretary of State is satisfied that any registered school is objectionable upon all or any of the following grounds ...[he] shall serve upon the proprietor of the school a notice of complaint'. I note that the Directorate does not maintain written procedures for the Registrar to follow in relation to the investigation of requests for the serving of a section 99 notice. I am critical of this and consider that to ensure a transparent and consistent approach to dealing with requests of this nature, a clear written procedure should be in place.

27. Turning to Mr C's concern that the Registrar's actions in not consulting with him or the Department were unreasonable: the crux of Mr C's concern is

that the manner in which the matter was reported to the Department was inappropriate; Mr C was also concerned that the main source of information was the School. Mr C believed the Registrar should have corroborated the School's position with the Department and that the failure to do this meant his investigation was neither transparent nor thorough. The Directorate's position is that the Registrar acted fairly and fully in discharging his responsibilities and statutory duties. In considering this issue I have noted that the Inspector concluded that:

'Disclosure of any serious child protection incident places responsibility on every adult to take action as soon as possible. Best advice is the adult must refer to police or social work, must not investigate and cannot ignore.'

28. Given this and given the seriousness of the allegation, I appreciate Mr C's concern that the School's contact with the Department about this was informal (by telephone) and was not followed up in writing by either party. I note that the Inspector recommended a 'tightening up' of communication procedures in this regard. I also note the point Mr C raised that it was only following his Solicitors' contact with the Department that the Child Protection Case Discussion was held which then led to referrals to other agencies. Given this, I can appreciate Mr C's concern over the initial reporting of the incident and his wish to have this investigated further by the Registrar.

29. In conclusion, given the significance of the incident, the findings of the HMIE Inspection and the reporting guidelines set out in the National Guidance for Child Protection in Scotland, I consider that this matter should have been followed up more robustly by the Registrar when considering Mr C's request for the service of notice under section 99 of the Act, and that he should have obtained clarification from the Department of the position given the sensitive nature of the case and the differing accounts given, as was suggested may be appropriate by the HMIE report.

30. As to whether the Registrar should have met with Mr C before preparing his decision, I note that the letters and documentation Mr C and Ms B provided to the Registrar and the Directorate were comprehensive and fully articulated their concerns about the processes followed by the School. I accept the Registrar's position that this written information was sufficient for his consideration of Mr C's position.

31. On balance, and given the seriousness of the issues raised, I uphold this complaint. I have found it would have been appropriate for the Registrar to contact the Department to seek confirmative information about its contact with the School, rather than rely solely on the information provided by the School during HMIE Inspection. I must add that I make no suggestion that doing this would have changed the Registrar's advice to the Ministers; however, this would have ensured that the whole process appeared thorough and impartial to those concerned.

32. I have noted a number of other issues during the course of this investigation. The separation of the jurisdiction and remits of the Registrar and HMIE could have been made clearer from the outset. I note as an example the Registrar's comment that 'HMIE does not consider that it could add any advice further to that which has already been provided to Ministers,' whereas it appears that during his meeting with Mr C in September 2010 the Registrar had stated he was not able to comment on the content of the HMIE report. The reviews by the Deputy Directors of the Directorate also referred to the findings of the HMIE report extensively. Clear explanation of the separation of powers in this regard could have saved Mr C's considerable efforts and time in attempting to discuss the Registrar's advice to Ministers with the Inspector. This has been a difficult and arduous process for Mr C; despite initially complaining when the decision was issued in September 2010, and attending a meeting with the Registrar, Mr C was not signposted to the complaints process until March 2011. I note that Deputy Director 2 has stated that in the future, information about the separation of powers, as well as information about the statutory process, limitations and complaints procedure, will be provided to complainants from the outset. I expect the Directorate will take the action necessary to ensure this is done.

33. Finally, I also note that when the Registrar's decision was sent to the Solicitors, it did not provide details of the recommendations made to the School. This would have been of benefit, by giving Mr C notice of what the School had been asked to do as a result of the investigation into his request for the service of notice under section 99 of the Act. I make the following two recommendations.

(a) *Recommendations*

34. I recommend that the Directorate:

Completion date

- (i) ensure that written procedures are in place for investigating and reporting to Ministers on a request for a section 99 notice to be served; and 17 October 2012
- (ii) ensure that any recommendations which are made by the Registrar in relation to a request for a section 99 notice to be served are notified to all relevant parties. 17 October 2012

(b) The Registrar's report was based on factually incorrect information

35. Mr C was concerned that, as a result of the School's records not being properly maintained, the Registrar's advice to the Ministers (having relied on the information provided in HMIE report following the School visit) was, therefore, factually inaccurate. He felt this meant the decision was not justifiable. He raised examples of inaccuracies, including that the School had said they were first made aware of the incident by Mr C on 28 August 2009, but that in fact Mr D had held a meeting with the Headmaster of the School (the Headmaster) on the afternoon of 27 August 2009. Mr C said no record had ever been made of this meeting, despite his requests for it. Mr C mentioned other meetings of which there were no records, including one held between the Headmaster and the Rector of the School (the Rector) prior to the School's contact with the Department. Mr C also said that records of a meeting held between him, the Rector and the Headmaster on 11 September 2009 were inaccurate. Mr C referred to previous incidents reported to the School and said no records had been kept of these. He also referred to the conclusions within the HMIE report that no referral was made by any of the parents concerned to the Department, and that this was also incorrect given his Solicitors had referred the matter to the Department on his behalf. Mr C said that a referral to a meeting between him and the Headmaster in November 2009 during a parent's evening was inaccurate, as no such meeting had occurred and Mr C had in fact met another of Master C's teachers.

36. Mr C also reiterated throughout that the School had advised the Department of the incident via telephone, and that he had seen no evidence that this satisfied child protection policy guidelines. Mr C said he had not received a response to his position that the School could not be said to have complied with policies and procedures if it had reported the matter verbally only.

37. Mr C's position was that the Inspector had accepted both the School's records and that verbal contact with the Department was sufficient, which had

led to the HMIE report containing factual inaccuracies, which in turn led to the Registrar's advice to Ministers relying on factually incorrect information. Mr C said he felt that the Registrar's advice had, therefore, been misguided, and may have been different had the correct information been considered. Mr C said the Registrar had been unwilling to discuss these inconsistencies with him at any stage during the process.

The Directorate's response

38. The position of the Directorate and the Registrar throughout was that there had not been evidence to justify the serving of a section 99 notice, and that the Registrar had appropriately relied on the HMIE report and had taken all relevant matters into consideration. The Registrar reiterated that they did not have the locus to investigate individual complaints and that the purpose of the inspection was to consider the methods used by the School and to assess the policies and procedures in place. The Registrar had stated in his advice to Ministers, 'there is no evidence that the school records are not properly maintained'. The Registrar's advice that a section 99 notice was not required was based on his findings that the School had followed its procedures in respect of safeguarding pupils, had taken appropriate action in terms of monitoring etc as soon as the incident was reported to them, informed the Department and had acted impartially.

39. In his letter to Mr C of 31 January 2011, the Registrar stated 'there were some minor issues [with the School records] which we have brought to the school's attention, however, these in no way alter the ultimate decision of Ministers'.

40. During Mr C's email correspondence with the Inspector's office, a comment was made on 9 February 2011 that '[the Inspector] does not feel that any of the points [you] have raised have a material bearing on the advice given'.

41. In his review, Deputy Director 1 said it was not the role of the inspection 'to enquire into or comment on whether the investigation into the 'case history' prior to matters being brought to the school's attention should have taken place, or to carry out such investigations themselves'. He said the advice received had focused principally on the School's child protection policies and procedures and 'did not purport to be a comprehensive blow by blow account of events'. He noted that the procedures had been found to be generally sound but that scope for improvements had been identified and laid out within the recommendations.

Deputy Director 1 also said Mr C had used strong wording in relation to accusations about the School lying and falsifying records, and said that this had not been the impression given to HMIE during the inspection. Deputy Director 1 said nothing 'came to light which rang alarm bells' during the inspection, and said that in any event the HMIE report was 'only a part' of the consideration of the section 99 notice request. Deputy Director 1 also explained that section 99 of the Act was expressed in the present tense, and could not be used retrospectively. He said that the Ministers would risk acting out with the scope of the law if they issued a section 99 notice regarding a previous rather than ongoing situation.

42. In her review, Deputy Director 2 said that it was not possible for her to comment on verbal exchanges that took place (for example, between the Headmaster and the Department) but that HMIE had made a recommendation about improving the incident reporting process by ensuring written reports were maintained. Deputy Director 2 noted that when Mr C and she had met to discuss his complaints, Mr C had given her examples of the statements which he believed were factually incorrect, and that she accepted that there were 'inconsistencies'. Deputy Director 2 said she realised these would be upsetting, but that nonetheless the Registrar had considered all the evidence and fulfilled his statutory duties appropriately. She went on:

'it is not clear that if these differences had been resolved, that the actions taken by the school would have been different. In addition, HMIE's recommendations have been fully taken into account by the school, which should minimise the risk by the school of future inconsistencies.'

(b) Conclusion

43. In order to reach a decision on this complaint, I have considered Mr C's position and that of the Directorate. I have considered the terms of the Registrar's report and his advice to Ministers.

44. Although I appreciate that the purpose of the HMIE inspection when obtaining information for the Registrar was not to investigate the original incident, it is also the case that the inspection considered how the School's policies and procedures had been implemented following the reporting of the incident. I note from the HMIE report that the initial contact of Mr D with the School is not included within the report (and, therefore, subsequently not included within the Registrar's report) but can be found referenced within the Parent/Pupil Interview Forms from August 2009. I also note that the statement

that Mr C had not made any referral to the Department was inaccurate, as well as the statement that Mr C had met with the Headmaster in November 2009. It is also appears that at no stage did Mr C receive a response to his position that a telephone call did not satisfy the requirements of child protection procedures (his contention being that this created an inaccuracy as it challenged the position that the School had adhered appropriately to such procedures). I also take into account the fact that the subsequent review of Mr C's complaints by Deputy Director 2 accepted that inconsistencies had been noted. I suggest that more scrutiny could have been undertaken of these records to ensure the Registrar's advice contained accurate information and acknowledged inconsistencies. On that basis, I uphold this complaint. I must balance this finding by noting that these inaccuracies are generally minor, and again as stated within complaint a, I would not make the suggestion that these would change the course of action taken by the Registrar given the other findings and conclusions noted.

45. Nevertheless, I can appreciate that it was frustrating for Mr C that these inaccuracies were not rectified; this must have reduced his confidence in the outcome. I have two general recommendation to make.

General Recommendations

	<i>Completion date</i>
46. I recommend that the Directorate:	
(i) draw the findings of this investigation to the attention of the Registrar; and	3 October 2012
(ii) apologise to Mr C and Master C in relation to the failings identified within this report.	3 October 2012

47. The Directorate have accepted these recommendations and will act on them accordingly. The Ombudsman asks that the Directorate notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
Master C	Mr C's son
The School	The independent school which Master C attended
Child D	Another pupil at the School
The Department	The Social Work Department
Mr D	Child D's father
The Solicitors	The firm of solicitors Mr C instructed in relation to his complaints about the School
The Act	The Education (Scotland) Act 1980
Ms B	Master C's mother
The Registrar	The Registrar for Independent Schools
Officer 1	A member of staff within the Directorate
The Directorate	Scottish Government Learning Directorate
The Ministers	The Scottish Ministers
HMIE	Her Majesty's Inspectorate of Education, now Education Scotland

The Inspector	The HMIE Inspector who prepared a report about the School
Deputy Director 1	A Deputy Director at the Directorate
Deputy Director 2	A Deputy Director at the Directorate
The Director	The Director at the Directorate
The Headmaster	The Headmaster of the School
The Rector	The Rector of the School

List of legislation and policies considered

The Scottish Government: *The National Guidance for Child Protection in Scotland* [2010]