

The Scottish Public Services Ombudsman Act 2002

Investigation Report

UNDER SECTION 15(1)(a)

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Scottish Parliament Region: Highlands and Islands

Case 201303999: The Highland Council

Summary of Investigation

Category

Local government: Education; Secondary School

Overview

The complainant (Mr C) raised a number of concerns about the way in which The Highland Council (the Council) dealt with an allegation of examination malpractice against his son (Mr A). In particular, he said that they failed to follow Scottish Qualifications Authority (SQA) guidance.

Specific complaint and conclusions

The complaint which has been investigated is that the Council failed unreasonably to follow SQA guidance on candidate malpractice when dealing with an allegation involving Mr A (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:	<i>Completion date</i>
(i) provide Mr A with a letter of apology for the failures identified;	30 January 2015
(ii) make their secondary schools aware of the outcome of this complaint and of the importance of following available guidance; and	30 January 2015
(iii) liaise with SQA about the means by which they should document their procedures for dealing with such matters.	30 January 2015

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

Main Investigation Report

Introduction

1. On 17 January 2013, Mr A, who was 16 at the time, sat a Higher English textual analysis National Assessment Bank (NAB) exam at school. This was an internally verified examination, which counted towards the award of Higher English. It is understood that after marking the paper and making other enquiries, the school became suspicious that he may have had access to the exam's marking scheme and on this basis, on 23 January 2013, the school's head teacher arranged a meeting with Mr A, himself, and a depute head teacher. At this meeting, it appeared that Mr A admitted to having been shown the NAB and the answers had been gone over with him by a teacher at the school.

2. The day after the meeting the father of Mr A (Mr C), wrote to the head teacher about the outcome and whether or not Mr A was free to attend school to sit his Prelim exams. He said that as the position was unclear, he wanted a written reply and he also wanted a copy of the minute taken. The head teacher replied immediately, amongst other things saying that there would be no barrier to Mr A sitting his Prelims beginning on 28 January 2013. He also added that there was no minute available but that the depute head teacher had taken a note which he would be happy to share with Mr C in due course.

3. Throughout January and February 2013 there was a slew of correspondence between Mr C, the school and The Highland Council (the Council) mainly concerning the nature of the contact and communication to be made with Mr A and about his attendance at classes. However, Mr C wrote to the Council (to the Area Education Manager) on 9 March 2013, reiterating his concerns about the level of communication and insisting that in future it be in writing. He also repeated his request for a minute of the meeting held on 23 January 2013.

4. The Area Education Manager responded on 21 March 2013. She confirmed that she was happy for all communication to be written and she told Mr C that due to the ongoing investigation an extension date had been secured from the Scottish Qualifications Authority (SQA) for Mr A's Higher English. On 1 April 2013, Mr C wrote asking for further clarification about the extension.

5. In the meantime, on 25 March 2013, Mr C had been advised by the head teacher that the school would not acknowledge any success on Mr A's part in his NABs or his internal assessments, pending further investigation. Mr C was told that these were currently on hold. Nevertheless, the head teacher said that he was hopeful that a meeting could be arranged between him and Mr C regarding Mr A's 'educational provision'. It was acknowledged that circumstances were difficult but that the school continued to offer support to Mr A.

6. The Council's Education Manager wrote to Mr C on 12 April 2013, confirming that an extension had been secured for Mr A's NAB and folio of work until the outcome of the investigation. She said that this was to avoid compromising his Higher exam. This was followed on 3 May 2013 by a letter from the head teacher, advising that Mr A could sit his English Higher on 20 May 2013 and that his folio would now be submitted to SQA but that only one piece of writing was available and another was required as soon as possible. The head teacher went on to say that the piece of work being submitted would have a note appended to the effect that the standard of work demonstrated was not what had been expected and that there was no corroboration to show that it had been done unaided. It was confirmed that as Mr A had not sat a Prelim in Higher English there would be an opportunity for him to do so on 10 May 2013 and that his paper would be marked by an independent marker from outwith the school. Mr C was asked to confirm Mr A's attendance so that appropriate arrangements could be put in place.

7. Mr C replied on 6 May 2013. He said that Mr A was unavailable on 10 May 2013. However, he said that he was confused about the need to submit another piece of work now, given the information he had previously been given about an extension. Accordingly, he said that he needed further clarification. He emphasised that the first folio piece to which the head teacher referred should not be submitted at present and that he waited further contact from the school after the investigation was concluded. On 10 May 2013, the head teacher wrote to Mr C saying that he noted that Mr A would not sit his Prelim that day. He added that he would be happy to answer any questions about the submission of Mr A's folio, or any other matters, at a meeting arranged at a mutually convenient time. He asked Mr C to let him know. This was followed by a further letter from Mr C to the head teacher on 14 May 2014, saying that he believed that the responsibility for Mr A not being able to sit his English Prelim rested with the head teacher and he wanted an explanation about the situation

concerning Mr A's folio. He complained that the head teacher's actions had caused Mr A further confusion and distress.

8. Mr C made a formal complaint to the Council's Director of Education on 10 June 2013. He said that his son had been accused of seeing a NAB assessment before sitting the relevant exam and that the school's actions afterwards had not been in accord with SQA's guidance on candidate malpractice; as a consequence of which, Mr A could not sit his final exam in Higher English. Mr C complained that Mr A had been interviewed and harassed without his knowledge; Mr A had not been advised of the consequences should malpractice be established; he had had no opportunity to seek advice; he was given no opportunity to consider his response to the allegation; to submit a written statement; nor was he given any information about the SQA appeals process, should the decision on the allegation go against him. Mr C added that at no point had Mr A been informed about any other allegations concerning other aspects of his work, which was also contrary to SQA guidance. Mr C said he was concerned about whether Mr A's submission of work was on hold or suspended. He said that although he had asked for a written explanation, he had had difficulty accessing the information sent to him (by email); he had not been updated as promised; and information he requested had not been provided. He said that a further folio piece of work was now required by the school, although he had understood that the school had obtained an extension from SQA until the investigation was completed.

9. The Director of Education acknowledged Mr C's complaint by letter of 19 June 2013 and said that to allow the Council to progress matters it would be helpful to have a statement (either written or verbal) from Mr A. However, Mr C replied on 26 June 2013 saying that he found this request most irregular and was something he would have foreseen only as part of legal action. He maintained that his complaint had already been clearly stated, so it should be progressed and he should be given a reply. The Director of Education wrote back on 15 July 2013 and explained that he required a signed statement from Mr A (as he was now 16 and technically an adult) that he was happy for the Council to continue to deal with Mr C about matters concerning his education. In the meantime, the Director of Education enclosed a copy of the SQA document 'Dealing with malpractice in internally assessed qualifications: Information for centres' (Document 1). He added that while it was clear to him that the SQA offered advice on issues of malpractice, the prime responsibility lay with the centre (school) to conduct an investigation in line with their own

procedures. He confirmed that in his view the head teacher had followed established practice, by ensuring that a second member of the senior management team had been in attendance to take notes when the head teacher spoke with Mr A on 23 January 2013. He went on to say that it was not normal to inform parents in advance of a pupil being interviewed. Without hearing further from Mr A about the matter, he said that it was difficult for him to say more but that after the interview, the head teacher regularly sought advice from the SQA, amongst others, and that this was all appropriate. He further confirmed his view that it had been correct to seek an extension from the SQA and, in connection with this, had noted Mr C's comments about Mr A's folio but that, without hearing directly from Mr A himself, he was unable to provide any further comment. While he noted that Mr A did not attend school on 28 January 2013 or attend to sit his Prelim on 10 May 2013. He also noted that no alternative date had been requested.

10. Mr C contacted the Director of Education on 31 July 2013 and said that, while a statement from Mr A had not been declined, he wanted more information about what it should include. He also continued to allege that SQA procedures had not been followed and requested a copy of the school's internal policy for dealing with allegations of candidate malpractice. He maintained that, overall, matters had been handled badly and that it was totally unsatisfactory. This elicited a reply from the Director of Education on 20 August 2013 advising Mr C that he was unable to respond to some of his comments due to school holidays and people being absent. He also reiterated that a statement from Mr A confirming that he was in agreement to Mr C pursuing this matter would be of assistance. In the meantime, he confirmed his understanding of Mr C's complaint. Mr C responded by confirming his complaint with the aid of 17 bullet points (on 6 September 2013) and said, again, that SQA guidelines had not been followed.

11. Shortly afterwards (on 18 September 2013), as Mr C had asked the school to send him a copy of their internal policy on handling allegations of malpractice, the head teacher wrote to say that the school did not have such a policy nor were they aware that they were required to. The head teacher confirmed his view that any action taken in relation to Mr A had been taken on the advice of both the Council and the SQA.

12. By 23 September 2013, as the Council had not heard again from Mr C, the Director of Education wrote to him (although, in commenting on a draft of this

complaint, Mr C said that he did not receive this letter) saying that as there had been no agreement about a statement from Mr A, which would have allowed a more detailed reply to have been sent, it was considered that it would be appropriate to await the outcome of the disciplinary procedures which had been instigated against the teacher concerned (see paragraph 1). At that point, a senior official would be nominated to look further into the matter and reply to him. I understand that the disciplinary procedures concerned concluded on 27 September 2013 and on 14 October 2013, Mr C wrote looking for a reply to his complaint. He said that matters were totally unacceptable, Mr A was being deeply affected and that the school had no written policy to deal with similar situations.

13. Subsequently, Mr A was removed from the school roll (as he had not been attending) and Mr C reminded the Council that a response to his complaint was overdue. A letter was sent on 23 December 2013 by the Head of Education (although Mr C said that he did not receive this) confirming that a full review into his complaint had been initiated and that he would receive a reply before the end of January 2014. Mr A then (on 29 January 2014) sent a signed mandate giving his consent to the Council to look into the complaint Mr C had made.

14. On 20 February 2014, the Head of Education wrote to Mr C, referring to his letter of complaint dated 6 September 2013 (see paragraph 10): concerning Mr C's allegation that the Council had failed to follow SQA guidelines, he wrote that the school had an adequate system in place to deal with this type of incident but that to improve the situation, all secondary schools in the Council's area had been requested to carry out a review of their internal procedures. He did not uphold Mr C's complaint on this matter. With regard to Mr C's complaint that Mr A had been deprived of an opportunity to sit his Prelims and exams, he said that he had not attended on either 28 January or 10 May 2013 and alternative dates had not been requested, therefore, this complaint had not been upheld.

15. Mr C then complained to this office. In making his complaint, Mr C said that he was looking for an apology and for an assurance that all the Council's schools were aware of their responsibility to have in place a policy for handling complaints of malpractice.

16. The complaint from Mr C which I have investigated is that the Council failed unreasonably to follow SQA guidance on candidate malpractice when dealing with an allegation involving Mr A.

Investigation

17. As part of this investigation my complaints reviewer has taken into account all the documentation and information provided both by Mr C and by the Council. This included all the complaints correspondence, documentation relating to Mr A's exam work, notes of the meeting of 23 January 2013, information issued by SQA concerning candidate malpractice in internally and externally assessed examinations and assessments and SQA information booklets to exam candidates. Further enquiries were also made of the Council and the information obtained was taken into account. My officers contacted SQA.

18. While this report does not include every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C, the Council and the SQA were given an opportunity to comment on a draft of this report.

Complaint: The Council failed unreasonably to follow SQA guidance on candidate malpractice when dealing with an allegation involving Mr A

19. Mr C complained to me about how an allegation of candidate malpractice against Mr A had been dealt with on 23 January 2013 and then, afterwards; he said there was no one with Mr A in a pastoral role to provide him support and that he had been harassed into making statements that were not true. He maintained that Mr A was shown a lack of care and that, overall, there had been a failure to follow SQA guidance. As a consequence, he said his son had been denied a qualification at Higher level English. The Council, however, maintained that they had dealt appropriately with the matter by following their established practice which, they said, was in accordance with that of the SQA.

20. As part of the investigation into Mr C's complaint, my complaints reviewer contacted the SQA and asked about the documentation issued in relation to candidate malpractice. Her attention was drawn to two documents: Document 1 (see paragraph 9); and Candidate malpractice in externally assessed examinations and assessments: Information for centres (Document 2). The (then) Head of Quality Systems and Planning to whom she spoke confirmed that the information contained in these was applicable to this case and that the documents were mandatory (that is, not merely advisory).

Accordingly, it was her view that centres (schools) required to have a system in place to deal with incidents of malpractice in a format that could be made to SQA on request, in that she would expect it to be written down or documented. As such, the information available would be part of any audit trail required in the event of an appeal or for the purposes of quality assurance. The Head of Quality Systems and Planning said that the SQA did not have a model document for schools and authorities to use but that they would be expected to follow the information contained in the documentation referred to.

21. While the circumstances of this particular case were not discussed, my complaints reviewer was told that the SQA would normally expect a parent or guardian to be with a child or young person when they were asked about a similar matter. It would also be expected that there would be some sort of written statement by the person concerned. On the matter of exams and their results, in such a case it would be for the school to decide who to put forward for an exam, hence it would be the school's decision whether or not to submit any of the young person's work. She added that she would also expect any young person, whose work was being investigated, to be informed about the right of appeal in the event of a decision made against them. I noted that in this case there was no decision about Mr A's alleged behaviour (see paragraph 32).

22. The allegations made against Mr A were made with regard to an internally assessed qualification and Document 1 referred to this. Amongst other things, it stated in Section 3 that, with regard to suspected cases of candidate malpractice:

'Centres are advised to implement a system and procedure for recording all suspected instances of candidate malpractice, similar to that developed for dealing with complaints and appeals. This information must be available to SQA quality assurance activities on site and/or on request. In addition, for those qualifications that are subject to statutory regulation by SQA Accreditation or Ofqual, centres are required to report any suspected case of malpractice to SQA awarding body.

If your staff suspect there has been candidate malpractice before you submit results to SQA, ..., you are advised to:

- ...
- Ensure candidates are aware of your policy on malpractice, their responsibilities, and their rights during and following an investigation into alleged malpractice.

- Conduct an investigation in accordance with your internal system and procedures.
- Ensure that candidate results are not submitted to SQA during the course of the investigation.
- ...etc'

23. The SQA said that Document 2 was also applicable to the case and in the introduction to that document it said that:

'This guide explains the procedures for dealing with incidents of candidate malpractice. To ensure that the integrity of the SQA's qualifications is maintained, it is very important that centres adhere to the procedures in this guide.'

24. It went on to say in Section 3, Responsibilities, that:

'SQA requires that all instances of suspected or actual malpractice in an external assessment be reported to us at the earliest opportunity – this will normally be done by Invigilators and Markers. The only exception to this is any malpractice in the production of folio/project pieces that is discovered by the presenting centre before the materials have been submitted to SQA. Such instances should be reported to SQA, but should be dealt with in accordance with the centre's internal procedures.'

25. The SQA said that investigations should be carried out by the Head of Centre who should, amongst other things, advise the candidate of their individual responsibilities and rights as set out in these guidelines. Section 4.3 of Document 2 detailed that any investigation should establish the full facts and circumstances of the case, without assumptions being made and also that:

'When the Head of Centre discusses an allegation with a candidate, the discussions should be conducted in accordance with the centre's own policy for conducting disciplinary enquiries. All individuals involved should be asked to provide a written statement.'

26. Thereafter, section 4.4 detailed the rights of the accused individual who was under investigation that they should be provided with:

- Information about the allegation made against him or her
- Information about the evidence there is to support that allegation
- Information about the possible consequences should malpractice be established

- The opportunity to seek advice (as necessary). The opportunity to consider their response to the allegations (if required)
- The opportunity to submit a written statement
- Information of the applicable SQA appeals procedure, should a decision be made against him or her.'

27. Also, it stated that in some circumstances it may be necessary for the Head of Centre to exercise discretion as to how and when an allegation of malpractice and the supporting evidence was presented to the individual. The SQA further requested that Heads of Centre conducted any necessary investigation promptly and that SQA themselves aimed to conclude cases before August Certification, as any cases not concluded before this time would result in the candidate concerned having their award withheld.

28. In relation to this information from SQA, my complaints reviewer asked the Council about the school's own internal procedures and whether or not they could provide a copy. She was told that the school did not have a separate policy document in relation to malpractice. However, they said that it followed guidance issued by SQA and that had been the case with regard to Mr A. They provided copies of documents which would have been forwarded to SQA as evidence of this should they have been requested to provide it. The Council further commented that they had been unable to identify any written advice about the formal status of Documents 1 and 2, as to whether they were advisory or mandatory, and said that all the Council's schools used SQA Guidance notes as good practice guides and on the understanding that this was what the SQA expected.

29. With regard to the specifics of Mr A's case, it was confirmed that on 17 January 2013, Mr A sat a Higher English textual analysis NAB exam. On marking this, his teacher became suspicious that he had had access to the exam's marking scheme. This was based on a comparison between Mr A's class work and the standard of the exam response; the use of specific language in the exam response, which was identical in the marking scheme and was uncharacteristic of Mr A's other work; and the repetition of a small error which was contained in the marking scheme but was not otherwise likely to have been produced as a consequence of answering the exam question. After the paper was reviewed by a principal teacher, it was then discussed with the head teacher who, after discussing the matter further with an experienced SQA marker, met Mr A on 23 January 2013. A depute head teacher was also

present to take notes. The Council told me that this was in accordance with established practice and that it was not normal practice to inform parents before interviewing pupils. At the meeting, Mr A informed the head teacher that an English teacher at the school had shown him the NAB and gone over the answers with him. My complaints reviewer has seen the transcript of the meeting which confirmed this. I understand that a meeting was held the same day with the teacher concerned, who was then suspended from duty on full pay, pending a formal investigation.

30. The Council said that as Education authority they then proceeded to investigate the breach in exam security and, as part of this, they looked further at other examples of Mr A's work, including jotters and assessments, also at a previous NAB and other written work. It was concluded that Mr A had in some circumstances access to the marking schedule or to other assistance. The Council said that, throughout this time, the head teacher worked with the Education Service and also kept SQA informed.

31. The Council pointed out that, at the same time as the investigation into Mr A's work was ongoing, there was a parallel disciplinary investigation into the teacher concerned. Following guidance from the Council's legal advisor, it was concluded that a formal investigation into Mr A's admission of cheating could have been viewed as an attempt by the school to undermine the teacher's case and consequently would have been prejudicial to a disciplinary investigation. Accordingly, they said that in the absence of any retraction of the statement made by Mr A on 23 January 2013, and what they considered to be 'overwhelming' evidence that much of the rest of his written work in Higher English was not his own, the school did not feel at that stage that they could submit any of his existing written work to the SQA. The Council said that this was in accordance with SQA guidance not to submit any work until a formal investigation had been concluded (see paragraph 22). Thereafter, Mr A did not sit an English Prelim exam.

32. The Council told me that although Mr A was due to return to school in August 2013 to enter the sixth year, he did not do so and was ultimately removed from the school roll. Later, on 27 September 2013, although the disciplinary action against the teacher concerned was concluded, it was not, therefore, possible (as he was no longer on the school roll) to commence formal investigation into Mr A's written work which had been put on hold pending the outcome of the teacher's disciplinary hearing.

33. In responding to my office's enquiries concerning Mr C's allegation with regard to not following SQA guidance (see paragraph 8), on specific points the Council said that while Mr C maintained that Mr A was not given any information about the consequences of malpractice, Mr A like all other examination candidates at the school was given SQA booklets 'Your Coursework' and 'Your Exams' and that they clearly stated the position. Similarly, candidates were regularly warned at school assemblies. Furthermore, the Council said that they did not consider it necessary for Mr A to be given an opportunity to seek advice prior to discussions with him on 23 January 2013. The Chief Executive commented that Mr A was not being charged with anything and that the outcome of the discussions had not been prejudged. The head teacher wanted to ask Mr A openly about the exam and not receive a pre-prepared response. The Council said that after this meeting, although there were unlimited opportunities and offers to discuss the matter, Mr A did not do so. On the matter of an opportunity to provide a written statement, it was the Council's view that there was nothing to prevent him from doing so. On the subject of an appeal, it was the Council's view that as they had not made a formal decision on the matter, there was nothing to appeal and while they accepted that the issue of Mr A's exam malpractice was not conclusively resolved, there were reasons for this (see paragraph 32).

Conclusion

34. I am fully aware of Mr C's opinion that during a meeting on 23 January 2013, his son was coerced into admitting that he had cheated in an exam and that throughout dealing with the issue, the Council did not follow the guidance issued by the appropriate examination body. As a consequence, he believed that his son's rights (to information, advice and to provide a formal statement about the matter) had been ignored and he had been denied an opportunity gain a qualification in Higher English. Set against this, the Council maintained that they followed their usual internal procedures and that these procedures complied with SQA's requirements.

35. In considering these competing claims, my complaints reviewer sought information from SQA and was told that Documents 1 and 2 were not only guidance but were considered to be mandatory. She was also told that schools would be expected to have a system or procedure in place for recording suspected incidences of candidate malpractice that could be made available to SQA on request. However, reading of the relevant documentation did not

confirm the mandatory nature of the guidance. Nevertheless, I would expect written guidance from SQA to be followed unless there were particular reasons not to, in which case I would expect these reasons to be documented. Furthermore, given the statement from SQA that information must be available on request (see paragraph 20), I would also have expected their procedures to be more formally documented.

36. Document 1, which specifically related to internally assessed exams (ie, to Mr A's Higher English textual analysis NAB), advised that candidates should be made aware of the school's policy on cheating and of their rights during and after an investigation into an allegation about it. While the Council and school were clear that pupils were in no doubt that cheating was unacceptable (the booklets issued and mentions at assemblies, see paragraph 33) and I accept this, I have seen no evidence that Mr A was informed of his rights in terms of SQA advice, either before, during or after the meeting on 23 January 2013. This runs contrary to the guidance provided.

37. I noted that the head teacher could exercise discretion as to how and when an allegation of malpractice was presented (see paragraph 27) but this was not claimed in this case. Nevertheless, the school spoke to Mr A without notice and provided their reasons for doing so (see paragraph 33). They said this was their usual practice. However, in my view, due to the seriousness of the matter, it would have been appropriate to try to contact Mr C for him to attend and to be with Mr A. Notwithstanding that it has always been maintained that there was always an opportunity for Mr A to provide a written statement about his version of events should he wish (and I accept this), he did not do so. However, given the guidance, I consider that the school should have actively requested such a statement. Thereafter, it would have been for Mr A to decide whether or not to provide it.

38. In the face of these shortcomings, I must conclude that the Council failed unreasonably to follow SQA guidance and I uphold the complaint. Although Mr C believed that Mr A's failure to obtain his English Higher was as a consequence, I do not agree. It is noteworthy that Mr A has never denied that he had access to information to which he was not entitled; and it is clear that he had the opportunity to provide other new work and sit his Prelim (while the date offered may not have been suitable, another could have been arranged) and Higher exams. These were matters outwith the Council's control. However, the

Council should now provide Mr A with a letter of apology for the failures identified.

39. I note that, in the Council's final response to Mr C's complaint (the Head of Education's letter of 20 February 2014 refers), since his complaint all the Council's secondary schools were requested to carry out a review of their internal procedures and I commend them for this; however, I also recommend that they make them aware of the outcome of this complaint and of the importance of following available guidance. I also recommend that they liaise with SQA about the means by which they should document their procedures for dealing with such matters.

Recommendations

	<i>Completion date</i>
40. I recommend that the Council:	
(i) provide Mr A with a letter of apology for the failures identified;	30 January 2015
(ii) make their secondary schools aware of the outcome of this complaint and of the importance of following available guidance; and	30 January 2015
(iii) liaise with SQA about the means by which they should document their procedures for dealing with such matters.	30 January 2015

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

Explanation of abbreviations used

Mr A	the complainant's son
NAB	National Assessment Bank examination
Mr C	The complainant
the Council	the Highland Council
SQA	Scottish Qualifications Authority
Document 1	SQA document, Dealing with malpractice in internally assessed qualifications: Information for centres
Document 2	SQA document, Candidate malpractice in externally assessed examinations and assessments: Information for centres