

## Scottish Parliament Region: Highlands and Islands

### Case 200501880: Argyll and Bute Council

#### Introduction

1. On 12 October 2005 the Ombudsman received a complaint from Mr C concerning his daughter, Miss C, who it was alleged was subject to various assaults while attending her primary school (Primary School 1). Mr C was unhappy with subsequent events and with the way in which Argyll and Bute Council (the Council) handled the matter.

2. The complaints from Mr C which I have investigated concerned:

- (a) failure to give serious consideration to an allegation that his daughter had been assaulted and its effects on her education;
- (b) failure to organise a school transfer;
- (c) failure to give proper weight to the background of events in their request for financial help; and
- (d) failure to respond adequately to correspondence.

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

- (a) not upheld, see paragraphs 8 to 14;
- (b) not upheld, see paragraphs 15 to 19;
- (c) not upheld, see paragraphs 20 to 22;
- (d) partially upheld, see paragraphs 23 to 24.

4. Specific recommendations the Ombudsman is making resulting from this investigation are that the Council should:

- i. apologise to Mr and Mrs C for their failure to advise them of their right to complain to the SPSO; and
- ii. revisit the information contained in their Education Complaints framework.

5. The Council has agreed to apologise to Mr and Mrs C for the omission of information on their right to complain to the SPSO. They confirmed that this information will be included in their complaints framework.

### **Investigation and findings of fact**

6. The investigation of this complaint involved obtaining and reading all the relevant documentation, including the correspondence between Mr C and the Council. I have also had sight of correspondence between Mr C and his MSP; an internal council memo and letter; the Council's policies with regard to school placing requests and the provision of school transport; the Council's education complaints framework and Primary School 1's policy on bullying. I made a detailed written enquiry of the Council on 14 December 2005 and received the Chief Executive's comprehensive response on 8 February 2006.

7. I have set out my findings and conclusions for each head of complaint and, where appropriate, made recommendations at the end of each section. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

#### **(a) Failure to give serious consideration to an allegation that his daughter had been assaulted and its effects on her education**

8. Mr C said that, while she was attending Primary School 1, his daughter was subject to a number of assaults by other pupils while travelling on the school bus. He said that some of these were of a sexual nature. Mr C said that his wife raised the matter with the then head teacher (head teacher 1). However, he said that later, when raising a related incident, he found that no record of the alleged incidents had been made. Nevertheless, Mr C said that the new head teacher (head teacher 2) had been alerted to the situation.

9. In order to avoid contact with the other pupils involved, whom Mr and Mrs C considered to be responsible, Miss C transferred to Primary School 2 (see paragraph 12). When the time came to transfer to secondary school

Miss C ultimately became a pupil of Secondary School 1 rather than the normal local catchment secondary school. However, Mr C discovered that the other pupils involved in the incidents were to move to Secondary School 1 and arrangements were made with Secondary School 1's depute head and Primary School 2 for Miss C to temporarily relocate to Primary School 2, where she was set work from the secondary school.

10. In his response to me, the Council's Chief Executive said that, on 26 April 1999, Mrs C and her then neighbour met with head teacher 2, of Primary School 1, to report what Mrs C considered to be incidents of assault against her daughter. Mrs C said that there had been an incident of a sexual nature which had occurred over the weekend prior to the meeting, involving her then neighbour's two sons. There had also been incidents of a similar nature involving other children in the school bus. The Chief Executive said that Mrs C and her then neighbour believed that a particular pupil, boy X, was the instigator of such behaviour and was wholly to blame for the alleged incidents.

11. The Council said that head teacher 2 immediately instigated an investigation and individually interviewed all the children who used the school bus when the alleged incidents were said to have taken place. She concluded that the alleged incident did not constitute a sexual attack on any child and, in particular Miss C; the behaviour was inappropriate but related to what might be termed sexual curiosity and sexual exploration; there was evidence to indicate that one of the then neighbour's sons had taken the lead and influenced others to participate; and that there was evidence from other pupils on the bus to suggest that Miss C had participated willingly and had sometimes initiated activities. Head teacher 2 also spoke to the regular bus driver who had not witnessed any of the alleged incidents and she arranged a designated seating plan to be implemented with specific children being placed close to him. She further spoke to all the children who used the bus, emphasising good behaviour and the conduct that was expected of them. Thereafter, she spoke to all the parents and guardians involved who undertook to address the issues directly with each of their children.

12. The Council said that head teacher 2 contacted Mrs C (although Mr C denies this) to advise her of her conclusions but that Mrs C disagreed and continued to believe that boy X was to blame. Mrs C apparently said that she did not want either the police or social work involved with Miss C and that she was going to remove Miss C from Primary School 1 and enrol her in Primary

School 2, which she then did, despite head teacher 2's view. The Chief Executive said that Miss C had not attended Primary School 1 after 23 April 1999 and, therefore, she had not been interviewed in relation to the alleged incidents by head teacher 2.

13. Mr C said that, prior to these incidents, he and his wife raised other similar matters with head teacher 2's predecessor, head teacher 1, but that there was no record of this. Head teacher 2 confirmed that, when she was Miss C's class teacher, Miss C had spoken to her about alleged bullying incidents and she reported matters to head teacher 1. As her class teacher, she kept in touch with Miss C to monitor the situation and spoke to other pupils. The Council said that Miss C reported that matters had improved and other children on the bus said that at that time there had been no further incidents. When questioned, the bus driver did not think that there had been an ongoing problem.

*(a) Failure to give serious consideration to an allegation that his daughter had been assaulted and its effects on her education: Conclusion*

14. From the information sent to me, it is clear that head teacher 2 took Mrs C's allegations very seriously and looked into them, interviewing all those involved (apart from Miss C who did not return to school). It was her view that Miss C had not been assaulted but that some of the children travelling on the school bus had been involved in inappropriate behaviour. She took steps to stop the alleged incidents and spoke to all the parents and guardians concerned, including Mrs C, (but see paragraph 12) however, Mrs C did not agree with her conclusions. Nevertheless, I am satisfied that head teacher 2 took appropriate action. I, therefore, do not uphold this aspect of the complaint.

**(b) Failure to organise a school transfer**

15. Along with her classmates, Miss C ultimately moved from Primary School 2 to Secondary School 1 in 2002 (rather than to a closer secondary school) in order to avoid contact with the other pupils who had been involved in the incidents on the school bus. But Mr and Mrs C learned that boy X had moved into the catchment area of the school and would be attending there, so they contacted the head teacher (head teacher 3) and met with him on 6 January 2003. Mr and Mrs C were concerned about the contact Miss C would have with boy X, the boy they felt was the ring leader in events at Primary School 1 in 1999.

16. The Council said that head teacher 3 noted Mr and Mrs C's concerns and ensured that they were passed to appropriate staff members with the request that they monitor the situation and take steps to provide Mrs C with reassurance that the school were dealing with the matter. However, on 14 January 2003, during a meeting between the depute head (depute head 1) and Mrs C, she informed him that Miss C would not be returning to school. Depute head 1 thought it would be better if Miss C continued attending, allowing the school to monitor and manage the situation and while Mrs C said she would consider this, Miss C went absent because of illness, which her parents said was exacerbated due to the stress of the situation. They said they notified the school accordingly.

17. After discussions between Mrs C and Council officials, arrangements were made for Miss C to attend Secondary School 1 for one day a week and to spend the remainder at Primary School 2, where she was set work from the secondary school. It was the Council's intention that there would be a planned increase of time spent at Secondary School 1, in order that she could eventually attend full-time, but that this would be managed in a structured way. Despite this, Mrs C was unhappy with the proposal as she believed boy X's proximity would be detrimental to Miss C's general well being. The Council also said that, as Secondary School 2 was closer to Mr and Mrs C's home at that time, arrangements could have been made for her to attend there but that this was not acceptable to Mr and Mrs C as they were keen, in the long term, to move to another part of the region.

18. On 27 June 2003, an 'Inter Agency' meeting was held when Mrs C, depute head 1 and a social worker attended to discuss Miss C's education for the next academic year. Mrs C said that after discussion it was agreed that, in the circumstances, Mrs C's request for Miss C to be moved to Secondary School 3 was a reasonable one. I have seen the record of this meeting which recognises that Mrs C's opinion was 'a reasonable position for a parent to have' but the Council said that this was in no way intended to be an endorsement of that view but was rather a recognition of the validity of Mrs C's opinion. The record goes on to say, '[Mrs C] has decided that the best course of action is to send [Miss C] to [Secondary School 3]. This will necessitate a placing request being made to the authority. [Mrs C] will see to this as soon as possible.'

*(b) Failure to organise a school transfer: Conclusion*

19. While Mr C had complained that the Council failed to arrange a school transfer for Miss C, it appears clear to me that the meeting on 27 June 2003 agreed that Mrs C would make the arrangements, and although Mr and Mrs C said they expected an officer from the Education Department to pursue the matter, there is nothing in the notes of the meeting to suggest that he would do so. In the circumstances, I see no grounds to criticise the Council on this score and I do not uphold this aspect of the complaint.

**(c) Failure to give proper weight to the background of events in their request for financial help**

20. Mrs C made a placing request which was accepted on 16 July 2003. It was pointed out at that time that, if transport costs were involved, Mr and Mrs C would require to meet them except in exceptional circumstances. Therefore, on 28 July 2003, Mrs C wrote to the Education Department officer requesting forms for financial help, as Miss C would be travelling a considerable distance to school. Mr and Mrs C alleged that this letter failed to receive a reply, as did a letter to the Head of Education dated 29 August 2003. Mr and Mrs C said that their application for financial assistance was eventually turned down on the basis that they had made the placing request, but Mr and Mrs C felt that they had no alternative. They were unhappy because they said that the mitigating circumstances surrounding the school transfer were not taken into account. As a consequence of transporting their daughter to Secondary School 3, eventually changing jobs and moving house closer to Secondary School 3; Mr and Mrs C said that they lost approximately £10,000.

21. I have had sight of a letter of 12 August 2003 addressed to Mrs C, which the Council said was written in response to the letter of 28 July 2003. While it makes no reference to forms for financial help, it said that the writer had been unable to identify a funding mechanism from either the Education or Social Work budgets to cover the cost of the school journey. It pointed out that if Mr and Mrs C wished to continue with their placing request, they would be responsible for travel costs. However, the Council agreed that, as far as possible, Miss C could use existing transport links and courtesy rides and authorised a courtesy ride for part of her journey.

*(c) Failure to give proper weight to the background of events in their request for financial help: Conclusion*

22. From the documentation available to me, the Council maintained their view that the situation involving Miss C's attendance at Secondary School 1 could be managed, notwithstanding boy X's presence. They were fully aware of Mr and Mrs C's strong feelings in the matter and their concern for their daughter but, after discussing the situation, they remained of the view that it would be better for Miss C to remain in Secondary School 1. Nevertheless, they did not think Mr and Mrs C were being unreasonable. The record of the meeting of 27 June 2003 makes it clear that the onus was on Mrs C to make a placing request and, while the Council later looked into the possibility of funding the travel costs, they had not been able to find a source of funds. I am aware that, after moving to Secondary School 3 and before moving house, Miss C was travelling considerable distances and her parents had to fund this but this was their choice. It is Council policy to provide transport where a child at secondary school lives more than three miles away from the local secondary school. This was not the case with Miss C, who did not attend her local school. Only in exceptional circumstances did the authority provide transport for pupils who had transferred as a result of a placing request. The Council did not consider there were exceptional circumstances in this case and, while Mr and Mrs C disagree and take the view that proper weight was not given to their concerns, I cannot agree. Essentially, Mr and Mrs C disagree with the merits of the Council's decision and have not pointed to any administrative shortcoming in the way that decision was reached. In the circumstances, I do not uphold this aspect of the complaint.

**(d) Failure to respond adequately to correspondence**

23. Mr and Mrs C did not think the Council dealt properly with their correspondence. I have dealt with the response to their letter of 28 July 2003 above (paragraph 21). The Council's response to me also makes reference to their letter of 29 August 2003 to the Head of Education, to which Mr and Mrs C said they received no response, and have told me that they are unable to trace it. They noted that it was addressed to the former Director of Education, who had retired prior to Mr and Mrs C's letter being sent, when no Director was in place. The Council said there was no reason to think that this letter had not been received and that if this was the case, their failure to respond was regrettable. They offered Mr and Mrs C their apologies and I accept this as a satisfactory remedy to this aspect of the matter.

*(d) Failure to respond adequately to correspondence: Conclusion*

24. In their complaint, Mr and Mrs C said that they only learned of this office by accident. Despite the many pieces of correspondence they, and others on their behalf, had written, their right to make a complaint here had never been explained. In this connection, I have seen a copy of the Council's Education Complaints Framework, which details procedures and timescales involved in making a complaint. It does not make reference to the Scottish Public Services Ombudsman (SPSO) although the Council say that, where complainants are dissatisfied, they can ultimately complain to the Chief Executive and then to the SPSO if necessary. However, this is not spelled out and I can quite easily see how Mr and Mrs C remained unaware of their right. They could have begun the process of complaining to the SPSO at least a year earlier. I, therefore, make a partial finding of maladministration on this aspect of the complaint and suggest that the Council offer Mr and Mrs C their apologies. They should also revisit the information contained in their Education Complaints Framework.

25. As detailed in paragraph 5, the Council have agreed to apologise to Mr and Mrs C and to update their complaints framework.

30 May 2006

**Explanation of abbreviations used**

Mr C	The complainant
Mrs C	The complainant's wife
Miss C	The complainant's daughter
Boy X	Alleged instigator of incidents
The Council	Argyll and Bute Council
Primary School 1	School which Miss C attended when alleged incidents took place
Secondary School 1	Secondary school which Miss C first attended on leaving Primary School 2
Primary School 2	Second primary school which Miss C attended; also the school which Miss C attended temporarily, while being sent work from Secondary School 1
Secondary School 2	Miss C's normal catchment school
Secondary School 3	Secondary school which Miss C subsequently attended
Head teacher 1	Head teacher of Primary School 1 when alleged incidents took place
Head teacher 2	Subsequent head teacher of Primary School 1 (and previously Miss C's class teacher)
Head teacher 3	Head teacher of Secondary School 1
Depute head 1	Depute head teacher of Secondary School 1