



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against the Education Authority

NIPSO Reference: 201916372

The Northern Ireland Public Services Ombudsman

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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THE COMPLAINT

1. I received a complaint about the actions of the Education Authority's (EA) Education Welfare Service (EWS). The complaint concerns how the EWS communicated with the complainant between January and 12 August 2020.

Background

2. In January 2020 this office investigated a previous complaint from the complainant regarding how the EWS managed a referral about his son's school attendance. The complainant and this child's mother are divorced. The original complaint arose because the EWS initially engaged only with the child's mother despite the complainant also having Parental Responsibility.
3. That complaint was 'settled' with the EA who agreed to issue the complainant with an apology. The EA also agreed to review and improve communication in relation to issues of Parental Responsibility and information rights in the EWS attendance referral process.
4. On 9 January 2020 an Investigating Officer from NIPSO informed the EA of several issues the complainant raised which had not been resolved as part of the settlement.

Issue of complaint

5. The issue of complaint accepted for investigation was:
Whether the EA appropriately handled interactions with a parent following a complaint he made, in January 2020, about the conduct of its EWS in relation to the poor school attendance of his child.

INVESTIGATION METHODOLOGY

6. The Investigating Officer obtained from the EA all relevant documentation. This included documents relating to the EA's complaints process. The Investigating Officer also obtained the EA's comments on the issues the complainant brought to this office.

7. The information which informed the findings and conclusions are included within the body of this report. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles¹:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

8. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- The EA Complaints Handling Procedure (April 2019);
- The EA Unreasonable Complaints Policy (September 2017).

9. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the body's administrative actions. I cannot question the merits of a discretionary decision unless I find maladministration in the decision making process.
10. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important was taken into account in reaching my findings.
11. A draft copy of this report was shared with the complainant and the EA for comment on factual accuracy and the reasonableness of the findings and recommendations. The complainant and the EA both responded to the draft report, the content of which I considered.

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

THE INVESTIGATION

Detail of Complaint

12. The complainant said that following the settlement of his previous NIPSO complaint in January 2020, the EA did not address additional issues he raised and refused to provide answers to questions he asked. He also complained about the timeliness of correspondence from the EA during this period. He said that the actions of the EA have caused him stress, and he wants the EA to be held accountable.
13. This investigation will cover the period following the January 2020 settlement up to 12 August 2020, when the EA provided a final response to the complainant.

Evidence Considered

EA's response to investigation enquiries

14. The EA said that it believed it fully engaged with the complainant during 2020, that he was kept updated and informed of all matters, and information was communicated to him in a timely manner.
15. The EA said that due to the volume of correspondence and the complainant's tone/manner the Unreasonable Complaints Policy was applied on 13 March 2020. The complainant appealed this decision and the appeal decision was issued to him on 12 August 2020. The EA also said that issues the complainant had previously raised repeatedly were also responded to within the letter of 12 August 2020 to ensure clarity and completeness.
16. The EA said that the delay in providing the complainant with a response until 12 August 2020 was due to two factors. Firstly, due to the impact of Covid-19, the Complaints Management Service was operating with a skeleton staff temporarily while the organisation was in emergency planning mode. The second factor was EA officers' involvement in Education Restart Projects following the pressure on the service during the first three months of the crisis.

The EA apologised that dates set for response to the complainant were not met.

EA Records

17. I reviewed all relevant correspondence provided by the EA and the complainant. A summary chronology in relation to same is included at Appendix three to this report.

Analysis and Findings

18. I considered the nature and timeliness of the correspondence between the EA and the complainant during the period January to August 2020. I also considered the comments of the EA and the complainant in respect of same, alongside the relevant EA policy and procedure.
19. It is clear during this period that there was regular contact between both parties, in particular the complainant sent numerous emails to EWS raising various issues at different times. I note that the EA contacted the complainant by letter on 7 February 2020 and by email on 12 August 2020 to clarify a number of outstanding issues that had not been resolved as part of the settlement reached in January 2020. I note that the EA did not deal with these issues as a complaint, rather they were responded to as general correspondence. I am satisfied that the letter of 7 February 2020 and the email of 12 August 2020 clearly addressed many of the complainant's issues, including the question of medical evidence being out of date, and the EA inaccurately informing the complainant that his son's school did not notify them of his existence.
20. One of the complainant's issues related to an allegation from the complainant that a Senior Education Welfare Officer (SEWO) told an Education Welfare Officer (EWO) not to update the complainant following a meeting in August 2019.
21. The EA responded to this issue in its letter of 7 February 2020. In its response the EA said that the EWO was going to update the complainant at the August 2019 meeting but the complainant did not attend. The EA accepted that the

EWO should have updated him after the meeting and apologised that this was not done.

22. While I welcome this acknowledgement and apology from the EA, I note that the EA's response did not actually address the issue raised by the complainant, namely that the SEWO told the EWO not to update him. I also note that the EA informed this office that it responded to this issue in its letter to the complainant of 12 August 2020. However, this is inaccurate. This issue was not mentioned in the letter of 12 August 2020 and the EA does not appear to have provided the complainant with a response adequately addressing this issue.
23. I consider this failure to be contrary to the Third Principle of Good Administration 'Being open and accountable' which requires that any information provided should be complete. I therefore uphold this element of the complaint. I am satisfied that this failure meant that the EA has not provided the complainant with an adequate response to this issue, and he is understandably frustrated with the lack of response and clarity in this regard. I am also satisfied that this failure caused the complainant the time and trouble in bringing the issue of complaint to this office.

Unreasonable Complaints Policy

24. During my consideration of the EA's interactions with the complainant, I considered the application of the Unreasonable Complaints Policy. I note on 13 March 2020 that the EA informed the complainant it would no longer be corresponding with him on issues it had previously responded to on 7 February 2020. I note that the EA said this was due to the volume and nature of correspondence sent by the complainant to the EA after 21 January 2020. I am satisfied that the EA's decision to invoke this policy is a discretionary decision, and I did not identify any issues which would lead me to question that decision.
25. However, I note that Step 4 of the Policy states that the complainant can request a review of the decision and '*The Complaint Management Officer will coordinate a review which will be considered by a senior officer.*' The complainant did request a review and a response was provided to him on 12

August 2020. I note that the review was conducted by the Complaint Management Officer (CMO). While the CMO is responsible for coordinating the review, the policy clearly states that it should be considered by a senior officer. The response of 12 August 2020 indicates that this did not happen as it was the CMO who considered the matter, rather than a senior manager. This was not in line with policy.

26. I find that this failure is contrary to the first Principle of Good Administration 'Getting it right' which requires that public bodies should act in accordance with its policies, and the fourth Principle 'Acting fairly and proportionately' which requires that decisions and actions are appropriate and fair. I am satisfied that this failure meant that the complainant was not provided with an opportunity for his review to be considered by the appropriate person. However, I cannot conclude as to whether this would have led to a different review outcome.
27. I considered the timeliness of the correspondence from the EA to the complainant between January and August 2020. I note that the Unreasonable Complaints Policy does not set a timeframe for completion of the review. I also took into account the EA's comments that the impact of the Covid-19 pandemic caused the delay in providing the appeal outcome. I note and welcome that the EA has acknowledged the delay and apologised to the complainant for same. I acknowledge and understand the frustration of the complainant in this regard. I also note the complainant's view that the impact of the Covid-19 pandemic does not justify the delay. However taking into account the unprecedented challenge that the pandemic has posed to public authorities, I do not believe that such a delay in this instance amounts to maladministration.

NIPSO Communication with EA

28. I note on 9 June 2020 the EA informed this office that the complainant had not yet exhausted its complaints procedure, and that it aimed to provide a final response to the complainant by 26 June 2020. This office communicated that target timeframe to the complainant. However, the response was not provided to the complainant by the agreed date and on three further occasions the EA provided this office with revised timeframes for responses, none of which were

met. I am concerned that on four occasions this office was misinformed in this regard. I am also disappointed that the misinformation provided by the EA in relation to these timeframes meant that this office provided the complainant with inaccurate dates by which he could expect the EA's response. I would remind the EA of the need to keep to such commitments in line with the second Principle of Good Administration 'Being Customer Focused'.

CONCLUSION

29. I received a complaint about the actions of the Education Authority's Education Welfare Service. The complainant said that the EA did not address issues he raised and refused to provide answers to questions he asked. He also complained about the timeliness of correspondence from the EA.
30. The investigation found that although EA addressed most issues adequately, it failed to provide the complainant with a response in respect of one the issues he raised. I also established that the complainant's appeal under the Unreasonable Complaints Policy was not conducted in line with policy as it was not considered by a senior officer.
31. I am satisfied that the maladministration I identified caused the complainant frustration, the loss of opportunity to have his appeal considered by the appropriate person, and the time and trouble in bringing his complaint to this office.

Recommendations

32. I recommend that the EA provides the complainant with a written apology in accordance with the NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).
33. In terms of service improvement I further recommend that the Unreasonable Complaints Policy should be amended to include a target timeframe for

completion of the review stage of the policy (within **three months** of the date of this report).

34. I also recommend that the EA share the outcome of this investigation with relevant staff highlighting the learning outcomes identified (within **three months** of the date of this report).

35. The EA accepted my findings and recommendations.

A handwritten signature in black ink that reads "Margaret Kelly". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

MARGARET KELLY
Ombudsman

31 January 2022

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.