

Response of Browne Jacobson LLP (Solicitors):

DCSF Consultation - A New Way of Handling Parents' Complaints about School Issues

Complaints handling in the context of interest in public administration

The DCSF consultation on handling parents' complaints about schools is timely given the current interest in improving the accountability and responsiveness of public services. The Public Administration Select Committee and Parliamentary and Health Service Ombudsman recently published reports which focus on making public services more accountable to customers. The Law Commission has recently published a consultation paper on the legal framework of remedies available for public wrongs. The paper encourages increased use of complaints systems as an alternative to litigation to redress grievances and improve public administration.

The new DCSF proposals

Handling complaints at school level

All complaints should be first addressed by schools, including by teachers, head teachers and governing bodies as appropriate to the nature of the complaint. Mediation and reconciliation at an early stage are likely to be helpful but would increase costs significantly for local authorities and schools.

Statutory guidance on the principles and processes that schools should follow when handling complaints would be preferable to mandatory requirements. Mandatory requirements would be inconsistent with the independent status of Academies, voluntary-aided schools, City Technology Colleges and City Colleges for the Technology of the Arts. Compulsory procedures would not sit easily with the freedom accorded to these schools in other areas, for example, in relation to admissions and curriculum. Statutory guidance would ensure all types of schools manage complaints according to core values, whilst providing flexibility to deal with complaints in a way which best suits the particular school.

Handling complaints not resolved at school level

Access to Independent Review Service or Referrals System

The complaints system should be as open and accessible as possible to promote confidence in the procedures and encourage efficient resolution of complaints. Young people, parents, including others with parental responsibility, and carers of children, should have access to the complaints service.

Discretion to dismiss complaints

An Independent Complaints Review Service should have discretion to dismiss complaints or terminate investigations if it appears that there is no case to answer. This would prevent time and money being wasted on groundless complaints.

Independent Review Service or Independent Local Referrals System

Remit

An Independent Complaints Review Service is preferable to an Independent Local Referrals System. A Local Referrals System could only refer a complaint back to the governing body of a school for reconsideration. However, a national independent service would have the power to consider the substance of complaints. This would enable the service to assess whether schools had followed the proper processes for handling the complaint as laid down in statutory guidance or mandatory requirements. These wider powers would be more likely to provide an effective resolution of complaints and inspire confidence in parents that a complaint has been reviewed properly. However, schools would inevitably become involved in more litigation in order to defend their decisions to a new independent service of local referrals panel.

Structure of Independent Review Service

Local Government Ombudsman (LGO)

The LGO would ensure that a national review service is independent. The LGO currently looks into complaints about education matters that are the responsibility of a local authority and has a role in school admissions, appeals against permanent exclusions and certain special educational needs cases relating to local authority functions.

However, giving the LGO power to investigate many more types of complaints about schools would significantly increase its workload and require changes to its organisational structure.

Office of the Schools Adjudicator (OSA)

The OSA would ensure the independence of a national review service. The Schools Adjudicators deal with issues connected with admission arrangements, school reorganisation, competition and assets. However, placing the independent service with the OSA would require a significant increase in capacity and major organisational changes to deal with parental complaints.

Structure of Independent Referrals System

Local authorities would need to convene independent panels. The membership of these panels should be regulated by law. It is likely, however, that parents would wish for there to be a parent panel member to

represent their views. Any panel which did not include a parent member would be open to criticism that it is unrepresentative and biased against parents.

However, schools are unlikely to have confidence in the independence of a panel which included parent members. Local authorities will also have an interest in some decisions and parents may not perceive the panel as sufficiently independent.

It is inconsistent with the independence of Academies, voluntary-aided schools, CTCs and CCTAs that complaints about these schools should be reviewed by a local authority panel. In addition, these schools are likely to feel that local authorities do not have the same detailed understanding of their circumstances as they do of the circumstances of maintained mainstream schools.

As an alternative, a duty could be placed upon the more independent school models to convene their own local referral panels. This would safeguard their independence from local authorities. However, the impartiality of a panel convened by schools to review complaints against themselves is unlikely to be popular with parents. A national independent review service is therefore preferable.

Power to make recommendations or directions

Independent Complaints Review Service

If an independent review service were to be placed with the LGO, then it could only make recommendations where a complaint is upheld. Where a school does not follow a recommendation, parents would have to resort to judicial review. A reserve power of the Secretary of State to direct compliance with recommendations could avoid the need to go to judicial review in many cases.

However, if the service were to be located with the Office of the Schools Adjudicator, it would have the power to direct schools to take action. This may ensure swifter compliance by schools where a complaint is upheld. The directions would be enforceable by judicial review brought either by the Schools Adjudicators or a parent if a school failed to comply with directions.

Independent Local Referrals System

An independent local referral panel could only recommend that governing bodies reconsider their decision. This very limited power to ask governing bodies to revisit complaints is unlikely to create confidence in parents seeking an independent review of their complaint by a separate body. The LGO would have no power to investigate the decisions of local authorities in reviewing parents' complaints. As a safeguard, parents should be able to apply for judicial review of a panel's decision not to recommend reconsideration.

Remedies

Although an independent service could not substitute its own decision for that of the governing body, it would have a wide range of remedies at its disposal where a complaint is upheld. These would include that the school should apologise or change its policies and practices. A local referrals panel could only ask the governing body to reconsider its own decision. The wider powers of an independent service would promote greater fairness and provide more effective remedies.

It is an option for an independent service to be located with the LGO. The LGO can award financial compensation to complainants who have suffered financial loss or where injustice has caused distress or annoyance. The costs of financial compensation for many more types of complaints about schools would be prohibitive. However, the availability of financial awards recommended by the LGO for SEN, admissions and other education issues could mean it would be inconsistent to withhold this remedy in relation to other complaints about schools reviewed by the LGO.

Roll-out

There is likely to be a significant demand for the new service when it becomes available. There is a risk that any organisation tasked with reviewing parental complaints will be unable to cope with the number of complaints referred to it.

Substantial difficulties are also likely to be encountered when integrating the new service with different types of schools.

Special Educational Needs

Disputes about the scope of special educational needs will remain within the remit of the Special Educational Needs and Disability Tribunal (SENDIST/First Tier Tribunal). Complaints about the provision of SEN specified in a child's statement currently go either to the LGO or the Secretary of State. Giving the new service the power to consider complaints that a child with an SEN statement is not receiving specified provision would avoid confusion and help streamline complaints procedures for parents.

As SEN provision is the responsibility of local authorities, it is not appropriate for independent local authority panels to review whether or not children with statements of SEN are not receiving the provision specified in their statement.

Integration with other complaints procedures

A national independent review service would have the power to consider virtually all parental complaints about the decisions of a governing body.

There are currently separate complaints procedures for admissions, exclusions, SEN and other services provided by local authorities. Ofsted can also investigate complaints relating to a school as a whole.

The range of different forums in which to bring a complaint has led to inconsistent decisions. For example, in *R v Independent Appeal Panel of the London Borough of Barking and Dagenham*, SENDIST found that there had been disability discrimination in respect of fixed term exclusions of a child. The Independent Appeal Panel (IAP) later met to decide whether there had been disability discrimination in relation to the child's permanent exclusion. The IAP decided not to take into account SENDIST's decision that there had been disability discrimination. It went on to find that there had been no discrimination in respect of the permanent exclusion. On appeal, the High Court ruled that the IAP was not obliged to have regard to the decision of SENDIST. The case is now being taken to the Court of Appeal.

To avoid such conflicting decisions, the different complaints systems should align over time and their interaction with each other should be streamlined. A single point of entry for all complaints relating to education issues would assist in the speedy and efficient management of parental complaints. However, creating a streamlined service would require major changes to existing procedures for complaints handling and judicial redress.

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