

Open Report on behalf of the Executive Director of Children's Services

Report to:	Children and Young People Scrutiny Committee
Date:	7 September 2012
Subject:	New arrangements for progressing unresolved school complaints

Summary:

This report summarises the recent changes to school complaints procedures which were introduced under the *Education Act 2011*, as well as clarifying changes brought about as a result of the academy conversion programme.

It also considers the implications of these changes for the Local Authority, parents and schools.

Actions Required:

The Children and Young People Scrutiny Committee is requested to:

1. Receive the report.
2. Clarify any of the points described where necessary.

1. Background - Context and Policy Changes

1.1 *Maintained Schools - Governing Bodies' Duties*

Section 29 of the *Education Act 2002* requires all governing bodies of maintained schools to establish procedures for dealing with school complaints concerning individual children and to publicise these procedures. Schools are free to determine their own procedures.

In 2007, the DCSF provides a guidance document to schools - *School Complaints Procedures* - highlighting a staged model:

Stage 1 - Informal resolution with staff member/individual teacher

Stage 2 - Head Teacher

Stage 3 - Governing Body

In 2011, the DfE produces further guidance *School Complaints Procedure 2011* which supports the three stage model.

School Complaints Procedures would not include staff grievances or disciplinary procedures, nor would they cover procedures which have their own statutory processes such as Admission or Exclusion Appeals. Some complaints about provision for children with Special Educational Needs (SEN) or disabilities will also have a separate appeal process, namely the first-tier tribunal.

Note: Whilst some parents will raise complaints directly with Ofsted, the body does not have a remit to investigate individual complaints. However, parental complaints can trigger an earlier inspection and Ofsted will sometimes refer complaints to other agencies.

Maintained Schools - Local Authority Role

Under Section 409 of the *Education Act 1996*¹, Local Authorities were required to have procedures to consider complaints about the curriculum and collective worship in schools; however, Local Authorities had no legal obligation to investigate complaints relating to individual children and no powers of direction.

Maintained Schools - Appeal to the Secretary of State for Education (SSfE)

Where complainants were dissatisfied after they exhausted a school's internal complaints procedure, they could refer the matter to the SSfE.

Sections 496 and 497 of the *Education Act 1996*, gave the SSfE powers to act where a 'school is or is proposing to act unreasonably in the exercise of its powers, the performance of its duties, or has failed to discharge a duty at all.'

- Duties and powers refer only to those set out in Education Acts
- 'Unreasonable' means that no reasonable school would have acted in such a way.

Maintained Schools - Appeal to the Local Government Ombudsman (LGO)

In 2010, 14 Local Authorities, including Lincolnshire, entered the LGO pilot independent school complaints service. The *Apprenticeships, Skills, Children and Learning Act 2009* had given the LGO new powers to investigate school complaints about individual pupils. The LGO replaced the role of the SSfE in these 14 authorities.

Maintained Schools - The Education Act 2011 Revokes Appeal to the LGO

Shortly after the LGO pilot was initiated, the new coalition Government announced their intention to repeal the LGO service in their White Paper - *The Importance of Teaching (DfE 2010)*.

¹ This duty has been now repealed under Section 45 of the *Education Act 2011*

The service ended on 31st July 2012. Unresolved complaints about schools may once again be referred to the SSfE, via a new School Complaints Team who will process complaints made through an online complaints form or by post.

1.2 Academies - Governing Bodies' /Trustees Duties

Academies' complaints procedures must comply with the *Education (Independent School Standards) Regulations 2010*. The regulations require that academies make available on request their complaints procedure, which must include three stages:

- Stage 1 - Informal Process
- Stage 2 - Formal Written Process
- Stage 3 - A Hearing
 - before a panel comprised of at least three people not directly involved in the complaint,
 - one of whom must be independent of the school's management and governance.

Academies - Appeal to the Young People's Learning Agency (YPLA)

Where a complaint remained unresolved after the academy's procedures were exhausted, it could be referred to the YPLA, which was the body that oversaw academies. However, the *Education Act 2011* disestablished the YPLA with effect from 1st April 2012.

Academies - Direct Appeal to the Education Funding Agency (EFA)

From the 1st April, unresolved complaints about academies could be referred directly to the EFA, the newly established arm of the DfE which oversees academies.

The EFA will generally consider complaints that:

- An academy did not comply with its own complaints procedure.
- An academy has failed to comply with a duty imposed under its funding agreement with the SSfE.

Provided there is not a more suitable organisation, the EFA may also consider a complaint that an academy has failed to comply with any other legal obligation.

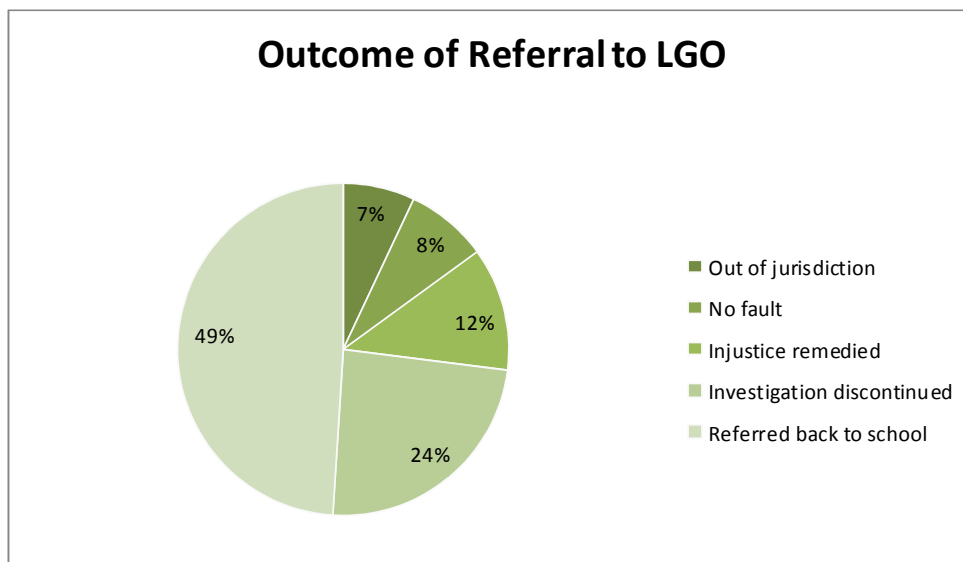
Academies - Appeal to the EFA via the Department for Education

From the 1st August 2012, the DfE established a new school complaints team to log complaints about all types of schools. Complaints may be made via an online complaints form or by post. Complaints about academies will be forwarded to the EFA.

2. Implications of Repeal of LGO Pilot Complaints Service

The LGO pilot was initiated during the Purdah period of the 2010 General Election, effectively preventing any publicity for the service. Lincolnshire joined the scheme in September 2010 and, shortly after, the coalition Government announced plans to repeal the service in the schools White Paper. Thus, the establishment of the service was not widely known nor its remit well understood before the service was abolished.

Prior to the election, the DCSF commissioned a report into school complaints and this report also considered the first twelve months of the LGO service. The LGO service received 224 complaints for schools for the 14 LAs under its jurisdiction during this period, of which 129 were considered appropriate for investigation. The chart below summarises the outcomes for these 129.



The report found that complainants' satisfaction with the service broadly correlated with the decision outcome; with the LGO reporting that just over 50% were satisfied and just under 50% dissatisfied. However, only those whose cases had been fully investigated were surveyed (20% of 129). Given that 95 complaints were filtered out at the initial stage and a further 100 did not proceed to a full investigation, this data may be overly skewed in favour of those 'satisfied'.

The Research Report compared the LGO service with the right of appeal to the SSfE. The scope of the LGO school complaints service was much broader than that of the SSfE. Neither the DfE nor the DCSF kept statistics on school complaints, but researchers examined a sample of 100 complaints and found only 11 with an indication there were grounds for SSfE to intervene under his Section 496 and 497 powers. In theory at least then, the repeal of the LGO school complaints service has greatly reduced parents rights of appeal in Lincolnshire.

Both the LGO and SSfE data revealed high numbers of premature complaints (45-49%), highlighting a lack of awareness of the correct procedure. This is further supported by the numbers of parents who contact the LCC to request intervention in school matters.

3. Impact of Changes upon Parents/Young People and Schools

The recent changes in both appeal bodies and processes for maintained and academy sectors have occurred in rapid succession; often with little publicity or provision of detail. Thus, many parents still believe the Local Authority directly controls schools and frequently ask LCC to intervene.

DfE research notes that the lack of knowledge about schools' complaints procedures is a major barrier for many parents in bringing forward complaints and highlights the role that many local authorities play in signposting parents through the process.

It should be noted that complaints range from trivial to serious, and include malicious and vexatious complaints. Some parents are reluctant to raise concerns with schools, fearing it will damage their relationship. Others will try to progress complaints to the highest level at the earliest opportunity, believing they will achieve a swifter or more satisfactory outcome.

Premature escalation of a complaint to an outside body is usually resented by schools, who feel they have not been given a fair chance to address any issues. Thus, once the complaint is redirected back to the school, relations are already strained, affecting any chance of successful resolution.

Conversely, some schools do not meet their statutory requirement to publicise their complaints procedures and will only respond effectively once an outside agency has become involved. Many small rural schools are inexperienced in handling complaints and can exacerbate matters through inexperienced handling.

An effective school complaints procedure can prevent the need for escalation to an outside body and is more likely to preserve the family/school relationship. However, where schools have failed to provide an effective procedure, it is clear that the majority of parents will now find no further recourse open to them.

4. Implications for Lincolnshire County Council

In reality, the repeal of the LGO school complaints service has little impact upon LCC's functions. As previously, LCC has no statutory role in investigating school complaints about individual children. Under Section 45 of the 2011 EA, LCC now has no statutory role in investigating complaints about the curriculum or collective worship either.

Some Lincolnshire schools, including academies, are open to the involvement of the school liaison officer in brokering resolutions. This has been helpful in moving forward some fairly intractable situations and has been appreciated by both

schools and parents. Success is entirely dependent on each party's willingness to participate as well as their willingness to compromise.

Through the school liaison role, schools are also supported in meeting their statutory duties in providing a school complaints procedure and governors' complaints committees are supported where necessary in meeting their duties to consider complaints. This support has been particularly valued where small or vulnerable schools are dealing with very aggressive or vexatious complainants.

A database of school complaints is maintained and monitored for trends and patterns associated with individual schools. Issues arising are referred to relevant agencies or departments where necessary. Examples of referrals with implications for LCC's statutory duties might include poor provision for children with SEN, child protection cases and children missing education.

5. Conclusion

It is evident from school liaison involvement that many schools would benefit from training for both staff and governors in effective complaint handling.

It is also evident that many parents have little confidence in schools' internal complaints procedures and would value having recourse to a more independent process such as that previously offered by the LGO school complaints service; which was valued for its accountability, independence and expertise.

A mediation service is a feature of the SEN Green Paper for resolving SEN issues and the DfE research report found that some authorities had done scoping studies to investigate the possibility of offering a mediation service for general school complaints on a buy back basis. However they identified little demand for a service on this basis. Many schools will typically receive no more than one or two complaints a year and feel the cost is not justifiable. Conversely, those that receive more complaints often develop more expertise in handling them. In addition, parents may not trust in the objectivity of a service paid for by the school.

There are concerns that schools are becoming increasingly unaccountable. Some education commentators have posited that, as local authorities become more and more distanced from the running of schools under the academies programme, they become well positioned to take on the role of accountability partner or critical friend; using such functions as overview and scrutiny to call in academy principals to respond to concerns. However, the success of using such 'soft powers' will be highly dependent upon academies' willingness to engage.

6. Consultation

Policy Proofing Actions Required

No policy proofing is required for this report.

7. Appendices

These are listed below and attached at the back of the report:

Appendix A - LGO School Complaints Service - September 2010 to July 2012
Summary of Outcomes for Complaints about Lincolnshire Schools

8. Background Papers

<i>White Paper: The Importance of Teaching</i> , DfE, 2010	https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%207980
<i>DfE School Complaints Procedure 2011</i>	http://www.education.gov.uk/schools/leadership/governance/a0060895/complaints-procedure-toolkit
DfE Research Report <i>Parents' and Young People's Complaints about Schools</i> , February 2012	https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-RR193
Guidance on making a complaint about a school: How to complain to the Department, August 2012	http://www.education.gov.uk/aboutdfe/complaintsprocedure/b00212240/guidance-on-making-a-complaint-about-a-school

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