



Northern Ireland

**Public Services**  
Ombudsman

# Investigation Report

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## Investigation of a complaint against the Education Authority

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**NIPSO Reference: 21650**

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.

# TABLE OF CONTENTS

	<b>Page</b>
SUMMARY .....	4
THE COMPLAINT .....	5
INVESTIGATION METHODOLOGY .....	7
THE INVESTIGATION .....	8
CONCLUSION .....	26
APPENDICES .....	28
Appendix 1 – The Principles of Good Administration	
Appendix 2 – The Principles of Good Complaints Handling	

**Case Reference:** 21650

**Listed Authority:** The Education Authority

## **SUMMARY**

The complainant raised concerns about the Education Authority's (EA) failure to investigate a potential child protection and/or safeguarding<sup>1</sup> concern regarding her son (the pupil).

The investigation examined information obtained from the complainant and from the EA. It also examined relevant EA records and child protection/safeguarding legislation and guidelines. The investigation established that the issues the complainant raised ought to have been identified as a child protection and/or safeguarding concern. It also found that EA staff failed to take appropriate action including referring the allegation to its Child Protection Support Service<sup>2</sup> (CPSS). The investigation established that by not having any internal guidance that would assist staff to identify such a concern and manage it appropriately, the EA failed to act in accordance with relevant legislation. It found the matter was referred to the CPSS two months after the complainant first reported it to the EA.

The investigation found that CPSS did not have powers to investigate the School's actions or to take punitive action against it. However, the EA provided advice and support to the School's Board of Governors (BOG) regarding the School's investigation of the complainant's concerns. The investigation established that CPSS had an obligation to consider the complainant's report and decide whether it was necessary to refer the matter to the appropriate body. CPSS concluded that the School's actions did not meet the threshold that would warrant a referral to Social Services. While this was considered a discretionary decision, the investigation found that CPSS failed to document its consideration and rationale for its decision. The investigation concluded that the absence of these records prevented an effective assessment of CPSS' decision. It also found that this caused the complainant to experience uncertainty regarding what led CPSS to reach its conclusion.

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<sup>1</sup> The act of protecting children from harm.

<sup>2</sup> A service within the EA that provides advice and guidance for safeguarding/child protection for children and young people.

I recommended that the EA apologise to the complainant for the injustice she experienced. I also recommended that it undertake a review of CPSS's decision not to refer the matter to Social Services. I would also have made recommendations relating to the implementation of a policy outlining when staff ought to report concerns to the CPSS, and training for relevant staff after the policy was implemented. However, the EA explained it implemented such a policy in October 2019. This was followed up in May 2020 by a protocol outlining when staff ought to refer child protection/safeguarding concerns to the CPSS. Furthermore, the EA commenced relevant training for all staff in January 2021.

## THE COMPLAINT

1. This investigation relates to the actions of the Education Authority (the EA) and its involvement following the complainant's report to it of a child protection concern. The complainant said the allegation concerned her son (the pupil), and occurred within his primary school (the School) on 21 February 2018. The complainant expressed dissatisfaction to my office regarding the EA's lack of action. The complainant also raised her concerns directly with the School and subsequently made a complaint. I commenced a separate investigation into the actions of the School following the complainant's completion of its complaints process.

### Background

2. The pupil was diagnosed with Autistic Spectrum Disorder<sup>3</sup> (ASD) in February 2017. He was later diagnosed with Attention Deficit Disorder<sup>4</sup> (ADD) in November 2017. The pupil was 'statemented'<sup>5</sup> in September 2018. The complainant said school staff locked her son in a storeroom for not completing his work on 21 February 2018. The complainant referred to the room as a '*converted storeroom*'. I will refer to it as 'the room' throughout this report. The room measures approximately 8' by 4' and is located within a learning support classroom. The complainant said the room did not have any natural light as the windows were covered with art work. She also said the door window was covered, and it could be locked from the outside. It is a different room to the 'sensory room', also located in the learning support unit of the school.
3. The complainant explained she contacted the EA and spoke to several of its officers between February 2018 and June 2018 about the incident. However, she said the EA did not initially deal with it as a child protection and/or safeguarding concern.

### Issue of complaint

4. The issue of complaint accepted for investigation was:

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<sup>3</sup> A term used to describe a number of symptoms and behaviours which affect the way in which a group of people understand and react to the world around them.

<sup>4</sup> A condition that includes symptoms such as inattentiveness, hyperactivity and impulsiveness.

<sup>5</sup> A statement of special educational needs sets out a child's needs and the help they should have. It is reviewed every year to make sure that any extra support given meets the child's needs. It is carried out in accordance with the SEN Code of Practice.

**Issue 1: Whether the EA advice, assistance and actions relating to the complainant from February and June 2018 were appropriate.**

## **INVESTIGATION METHODOLOGY**

5. In order to investigate this complaint, the Investigating Officer obtained from the EA all relevant documentation together with its comments on the issues the complainant raised. The Investigating Officer also conducted interviews with the complainant and relevant EA staff.

### **Relevant Standards and Guidance**

6. 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 Principles<sup>6</sup>:

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

7. 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 Education (Northern Ireland) Order 1996 (the Education Order);
- Children's Services Co-operation Act (Northern Ireland) 2015 (the CSC Act);
- The Education and Libraries (Northern Ireland) Order 1986 (the Education and Libraries Order);
- The Special Educational Needs and Disability (Northern Ireland) Order 2005 (the SENDO);
- The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (the Safeguarding Vulnerable Groups Order);

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<sup>6</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Safeguarding Board Act (Northern Ireland) 2011 (the Safeguarding Board Act);
  - The Department of Health's (DoH) guidance on Co-operating to Safeguard Children and Young People in Northern Ireland, August 2017 (the DoH Guidance);
  - The Safer Recruitment Consortium's (SRC) Guidance for safer working practice for those working with children and young people in education settings, October 2015, available on the EA website (the SRC Safeguarding Guidance); and
  - The Department of Education's (DE) Circular 2015/13, Dealing with allegations of abuse against a member of staff, April 2015 (the DE Circular).
8. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the EA. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important when reaching my findings.
10. 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 INVESTIGATION**

### **Issue 1: Whether the EA advice, assistance and actions relating to the complainant from February and June 2018 were appropriate.**

#### **Detail of Complaint**

11. The complainant said she contacted several officers within the EA regarding what she considered to be a child protection and/or safeguarding concern involving her son. She said she wanted the EA to undertake an urgent



investigation before the School could take steps to alter the 'converted storeroom' in which she believed her child had been placed on his own with the door locked. She said she also wished to ensure that no other child would be placed in the room. However, the complainant said the EA failed to investigate the incident despite her requests for it to do so.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

12. I considered the following legislation and guidance:

- The CSC Act;
- The Education and Libraries Order;
- The SENDO;
- The Safeguarding Vulnerable Groups Order;
- The Safeguarding Board Act;
- The DoH Guidance;
- The SRC Safeguarding Guidance; and
- The DE Circular.

13. Relevant extracts of the legislation and guidance referred to are enclosed at Appendix two to this report.

14. In particular, the following extracts are relevant:

#### The Safeguarding Act

*'(2) Each person and body to whom this section applies must make arrangements for ensuring that—*

*(a) their functions are exercised having due regard to the need to safeguard and promote the welfare of children; and*

*(b) any services provided by another person pursuant to arrangements made by the person or body in the exercise of their functions are provided having due regard to that need.*

*(3) Each person and body to whom this section applies must, in exercising their duty under this section, have due regard to any guidance given to them for the purpose by the Department'.*

### The DoH Guidance

*'The Education Authority (EA) delivers educational services, including an Education Welfare Service within which sits the Child Protection Support Service (CPSS). The Education Welfare Service leads on child protection/safeguarding within the education sector, with responsibility for providing safeguarding support, advice and training to schools, and to a range of other professionals employed by the EA to provide services which involve direct contact with children'.*

### The CSC Act

*2—(1) Every children's authority must, so far as is consistent with the proper exercise of its children functions, co-operate with other children's authorities and with other children's service providers in the exercise of those functions.*

### **Relevant EA records**

#### *Autism Advisory and Intervention Service<sup>7</sup> (AAIS) records*

15. The records document that the complainant telephoned the AAIS on 21 February 2018. A record of the call documents that the complainant *'sought advice re [the pupil] being sent to the "white room" when behaviour escalates in school, as she had been informed by C/A [classroom assistant] today that [the pupil] was brought to it for non-compliance regarding work'.* The note further documents, *'I advised [the complainant] to make an appointment to discuss her concerns with [the Acting Principal] directly and suggested she discuss the matter of risk assessment. [The complainant] agreed to do same. [The complainant] enquired if I had advised removal of [the pupil] during Teacher Support meeting in school. I stated removal was never advised and went on to discuss my recommendations...'*
16. The records document that the complainant contacted the AAIS again on 22 February 2018. The note documents that she was *'very upset whilst talking'*. It further documents, *'she had met with [the Acting Principal] this morning to discuss matter of [the pupil] being put into a room due to behaviour. [The complainant] stated she was unhappy with feedback received from [the Acting*

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<sup>7</sup> A service within the EA that provides advice and support for those children and families living with autism.

*Principal] regarding this matter, as school could not indicate how many times [the pupil] had been brought to this room, nor had risk assessment been completed'. The note also documents, '[the complainant] relayed she took [the pupil] home from school with her as she was concerned about behaviour approach being implemented correctly...I stressed that at no time would I ever suggest seclusion to target behaviour...'* In relation to action taken, the note documented that the AAIS Support Teacher gained consent from the complainant to discuss the matter with the Acting Principal.

17. The records document a note of the phone call the AAIS made to the Acting Principal on 22 February 2018 at 15:50. The note documents that the Acting Principal agreed to *'discuss with staff that AAIS do not advocate removal of children to a room when behaviour escalates, rather ethos is to de-escalate behaviour using special interests, calm area in class (pop up tent), use proactive rather than reactive strategies'*.
18. The records document a note of a phone call with the AAIS and the complainant on 22 February 2018 at 16:15. The note documents that the AAIS Support Teacher spoke with the Acting Principal and *'discussed strategies to encourage [the pupil] to tolerate doors being closed as: social story; countdown [word unclear] – door closed in toilet/bedroom, quick countdown initially then time extended; (strategies cont. [continued]) discuss with [the pupil] importance of car door always remains closed when mum is driving and he is ok with this. [The complainant] agreed to implement'*.

#### *Educational Psychology Service<sup>8</sup> (EPS) records*

19. The records document that the complainant contacted the service on 22 February 2018. The Educational Psychologist returned her call on 26 February 2018. The records document that during the call, the complainant explained that she *'kept [the pupil] off school Thursday and Friday. Been in classroom, refused to do in (sic) work. Took him down to calm room and didn't let him out. Wednesday [21 February 2018] – really upset...due to be seen in March 18'*.

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<sup>8</sup> A service within the EA whose aim is to apply psychology to help the development and emotional health and well-being of children and young people.

### *Dispute Avoidance and Resolution Service<sup>9</sup> (DARS) records*

20. The records document that the complainant contacted the DARS on 22 February 2018 at 12:10. The initial contact form documents that the complainant *'stated that she has recently discovered that [the pupil] is being removed from class and locked in an empty room in response to his behavioural difficulties associated with his diagnosis of ASD. [The Educational Psychologist] is due to carry out an assessment next week, but [the pupil] is so traumatised that [the complainant] is reluctant to return him to school until matters are resolved...AAIS is also involved'*.
21. The DARS Officer emailed the AAIS on 23 February 2018. The email refers to the phone call with the complainant and documents that the DARS Officer sent her a referral form for the DARS service. The email also documents, *'I believe you are aware of some of her concerns, so if you have a chance will you give me a ring please?'*. The records document that AAIS updated the DARS Officer on support it provided to both the teachers and the complainant on 13 March 2018.
22. The records contain a DARS referral form from the complainant, dated 23 February 2018. Under the section entitled, *'Main Area(s) of Disagreement'*, the form documents, *'[the pupil] being locked in a room as punishment, no contact with me when incidents have occurred, no record of incidents and refusal to let me see policies and the room [the pupil] has been held in over dinner and during class times'*. Under the section entitled, *'Proposed Action'*, the form documents that the DARS Officer *'agreed to speak again with [the complainant] and [word unclear] her to meet with the DARS'*.

### *Child Protection Support Service (CPSS) records*

23. The records contain a CPSS enquiry and follow up form, dated 23 April 2018. The form outlines a discussion held within the CPSS team regarding the complainant's concerns. The record of discussion section of the form documents, *'Being locked in a quiet room alone on more than two occasions, this has been admitted'*. It also outlines the support the pupil received from the

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<sup>9</sup> A service that provides an informal means of avoiding and resolving disagreements with schools or the EA in relation to a child or young person who has or may have a special educational need.

EPS and AAIS. The records contain an email from the CPSS, dated 25 April 2018, referring the matter to the School Development Service (SDS) within the EA.

24. The CPSS records contain a further enquiry form outlining a discussion it had with the Chair of the BOG. The record of discussion section documents, *'Mum had contacted CPSS on 13/06/18 saying no progress has been made'*. It further documents that the CPSS contacted the Chair and he provided an update on the status of the complaint.
25. The records document that the CPSS contacted the complainant on 21 June 2018. The form documents a recommendation for the complainant to consult with the EA (AAIS) regarding the room the School used for the pupil for reassurance that it *'isn't acceptable practise to have [the pupil] locked in the room alone as is alleged to have happened'*. The record documents that the contact was not *'by way of complaint'* but to ensure the room was being used appropriately.

#### *Other EA records*

26. The records contain a letter from the complainant's Member of Parliament (MP), which the EA received on 27 March 2018. The letter documents that the complainant wrote to the BOG of the School but had no response. It also states that the complainant informed the MP that the pupil was *'restrained by three adults and was locked in a room, he is still suffering the trauma of this'*. The records document correspondence within the CPSS team, which outlines suggested actions in relation to what it refers to as a *'safeguarding issue'*.
27. The records contain the EA's response to the complainant's MP, dated 23 April 2018. The letter details actions the EA's EPS and the AAIS undertook to date in relation to the pupil.

#### **The EA's response to investigation enquiries**

28. The EA explained that it was *'of the view that such advice, assistance and action was appropriate'*. The EA was asked if it was aware of any policies it follows regarding the use of seclusion rooms for pupils. It explained that it is

*'not aware of any such rooms as described as seclusion rooms in which the child may or may not be locked. Nor is it aware of any policies that govern the use of such rooms'. The EA further explained that its 'Behavioural Support Team and Autism Service are aware of the use of strategies put in place to support a child in addressing any difficulties they are experiencing where the child may be withdrawn to separate room with adult supervision for support or may wish to make use of a pod within the classroom. It is for the school to risk assess and manage the use of such strategies'.*

## **Interviews**

### *Interview with the complainant*

29. In her interview, the complainant said that following the incident within the School on 21 February 2018, she contacted the EA and *'explained on the phone that I had...a safeguarding issue and that I need to speak to someone urgently about an investigation, because at that point I wanted somebody to come in and look at this room before they could do anything to it'*. She said the EA *'instructed me that I was to get my letters off to the Chairman of the Board, which I did'*.
30. The complainant said she contacted the EA again in May and June 2018. She explained that the EA told her that *'until [the Chair had] done an investigation...the Education Authority couldn't do anything... I was like I need somebody to go in, I need this room to be looked at before anything is done to it'*. The complainant further explained that the EA *'kept saying that there was nothing they could do...that it was the Chairman of the Board, so once that investigation was carried out I could go back to them, but until then there was nothing'*.

### *Interview with EA staff*

31. The Investigating Officer held a round table interview with relevant EA staff.

32. The EA staff were referred to areas of the complaint. The group discussed information the complainant provided to it in February 2018. The group established that the complainant spoke with staff from the AAIS, the EPS, and DARS at that time. Upon review of the relevant notes, the group also established that although the complainant reported to the AAIS and the EPS that the pupil was placed into the room, she informed only the DARS Officer the room was locked.
33. The EA staff were asked about the procedure it would normally follow if such a report was received. The EA explained that *'the member of staff who receives that information would want to clarify that with the school in the first instance. Because...there are children who do have to be withdrawn from classes on occasions because of their challenging behaviours and they are taken to...quiet rooms or other rooms, but usually with a member of staff [who] remains with them. We also have children who on occasions have to be safely held because they are a risk to themselves or others, so just because those things may happen, doesn't necessarily mean that it's automatically a child protection or a safeguarding issue. So some further clarification is usually required in terms of trying to get information, so I would expect someone to try and find out what exactly is happening in respect of this child'*. It further explained in relation to the alleged incident, *'there's not necessarily a policy in respect of this, we would not expect however children to be locked in rooms by staff'*.

34. It further explained that once clarified, the member of staff who was made aware of the allegation *'could seek advice and guidance from Child Protection Support Service and then we would follow through on that with contact...probably with the school as well. But [...] it's about that clarification....And then decisions would have to be made. Is it escalating to child protection or safeguarding? Is there significant harm or harm involved here in respect of a child that requires further considerations, for example, does it need to go to Social Services for investigation and so on'*.
35. In relation to action undertaken, the EA explained *'there isn't a policy that the staff must automatically refer, nor is there for schools, that they must automatically refer a concern or an issue to Child Protection Support Service. So people are making their own judgements, they're having those conversations, they're perhaps seeing what they hope to be changes in obviously procedures and so on, and on that basis thinking well hopefully this is now being addressed'*. It further explained that the CPSS was not made aware of the complainant's particular concern.
36. The EA staff were asked what action it would normally take if a parent raises a potential child protection concern with the EA. It explained that if a member of staff was made aware of a child protection issue, they would *'have an obligation to follow it up'*. It also explained that the EA is *'not a Child Protection Support Service for parents, basically we are a Child Protection Support Service for schools and for EA services, however some parents...will come to us...we will speak to those parents, clarify what it is they're saying, and...if there is a concern about the conduct, behaviour of a member of staff...we will be speaking to the school basically about that to try and clarify from their perspective'*.
37. The EA explained that the Autism Officer *'did go back to the school and provide advice around recommendations that she would've given with regard to the autism to keep that child safe. Those would be proactive strategies that we would see in a behaviour management plan'*.



38. The EA staff were informed that the complainant reported the pupil was placed in the room because he did not complete his work. The explained that they were not aware of this information. It also explained that *'having this new information...potentially draw that to the attention of Social Services, because that...would very much concern me from a child protection point of view'*.
39. The EA staff were asked if it considered the situation of locking a child in a room would be considered a child protection and/or safeguarding concern. It explained *'if we're saying somebody closed the door and locked, key in the door and locked it...you'd have to start with the premise this could be a safeguarding concern...'*.

#### *Complainant's response to draft report*

40. The complainant referred to the EA's use of the terms *'calm room'* and *'quiet room'* to describe the room her son was placed in when he was removed from class. She said it was a *'converted storeroom, small in size, windows covered by Art...so no natural light, nothing in it not even a cushion to sit on and the door was closed on him which had a turn lock under the handle on the outside of the door'*.
41. The complainant referred to the DARS record from February 2018, which documented that she informed the officer the pupil was *'traumatised'*. The complainant said the EA *'ignored'* her report. She further explained that it should never have a parent involving an MP before their case is heard.
42. The complainant referred to the EA staff's agreement during their interview with the Investigating Officer that she informed only the DARS Officer the room was locked. She explained that the details she reported did not change. However, she said she provided new information to DARS when she later became aware of it.
43. The complainant also referred to the EA staff's explanation of what action it would take if it received a report of a pupil being locked in a room. She said she found the explanation *'harrowing'* and said *'restraint and seclusion is not*

*something that should be carried out daily, it should be a very rare occurrence, the last option available to staff, so it should be considered a priority if a parent raises a concern about these practices*'. The complainant considered the EA's explanation demonstrated that it sided with schools in these situations.

44. The complainant referred to the EA's comment that the CPSS is a child protection support service for schools and for EA services. She questioned how parents can report their concerns if schools will not record them.
45. The complainant also referred to the EA's comment that it would '*seek clarification*' around a school's use of seclusion. She said the EA have a '*one sided view of ASD*'. She also said the EA's response was '*horrendous*', and despite making '*numerous calls*' explaining the seriousness of her concerns, they were '*continually referred to as a SEN issue*'. The complainant also questioned if the EA officers attended mandatory ASD training.
46. The complainant questioned what action the CPSS took once it became aware of her concerns in April 2018. She asked why it did not refer the matter to Social Services, and why it did not take action against the School.
47. The complainant said her family's life changed as a result of the treatment her son received. She explained that both her children moved to a different school, and she herself has not been able to return to work or education. The complainant also explained that her son is punished in his new school for reacting to triggers as a result of his treatment. She said she considers the EA failed her son.

*The EA's response to a draft copy of this report*

48. The EA explained that '*in August 2017, the CPSS became a service in its own right*'. It said that the CPSS now has a dedicated helpline, which is accessible to all, including parents. It further explained it is also '*in the process of establishing an Education Safeguarding Forum that includes key stakeholders across the education sector*'.
49. The EA explained that at the time the complainant raised her concerns, there was a joint policy on Safeguarding and Child Protection for the five Education

and Library Boards, which preceded the existence of the EA. It said that *'while this should have been adhered to, the EA accepts that an EA specific policy was needed'*. The EA explained it now has an EA Child Protection and Safeguarding Policy, which the EA Board ratified and approved in October 2019.

50. The EA also explained that the CPSS and Human Resources (HR) protocol for managing allegations relating to staff was implemented in May 2020. It said, *'this facilitates CPSS and HR in jointly delivering a clear pathway of support for EA schools and services'*.
51. In relation to training, the EA explained that the CPSS developed the Child Protection and Safeguarding Learning and Development Framework. It further explained that the related training for staff *'is commensurate with roles and responsibilities'* and will be repeated every three years. The EA said the training commenced in early 2021. It explained that *'the CPSS will be reporting to the Corporate Leadership Team and each Directorate Management Team with regard to compliance of this mandatory training'*.
52. The EA explained it is *'seeking digital solutions to capture the data that will ensure we can efficiently measure compliance of all staff with all statutory, mandatory training. While this is not currently in place, our CPSS maintain the data of EA staff and school safeguarding teams child protection and safeguarding training. The data relating to EA staff is scheduled to be shared with the relevant EA Directors in March 2021'*.
53. The EA explained it *'does not have any powers of investigation, however we are clear that all allegations regardless of how they might be raised should be dealt with appropriately. This should include giving consideration to the potential that the nature of a complaint could indicate a child protection or safeguarding concern. Whilst it is reassuring that when this matter was referred to the relevant service appropriate action was taken to address the concerns, I apologise that our procedures at the time did not support this happening in a timely fashion. I acknowledge the complainant did not experience an appropriate response that could have facilitated an early resolution ensuring the*

*welfare of her son was the priority. We could and should have managed this better and in line with the EA values’.*

54. The Investigating Officer made further enquiries of the EA. In its response, the EA explained that the CPSS did not consider it necessary to refer the matter to Social Services. It said *‘it was not suggested that the staff involved deliberately intended to harm a child in their care, rather that there was misuse of a quiet room’*. The EA acknowledged it was potentially distressing for the pupil. However, its view was that the action did not *‘reach a level of significant harm’*. The EA further explained that the CPSS interpreted the matter as *‘potentially poor practice that warranted investigation by the Board of Governors at the school in liaison with special education’*.
55. The EA was asked to provide a record of its consideration of the decision not to refer the matter to Social Services. It explained its record did not *‘show the rationale for the decision’*. The EA said its *‘view was influenced by the conversation with [the complainant] and what was considered to be in the best interest of her son’*. It explained that it spoke with the Chair of the BOG and was satisfied that *‘the poor practice was being addressed and [the complainant] was signposted to the officers in EA who could reassure her of this’*. The EA said it acknowledges the rationale for its decision ought to have been recorded, as well as reference to it raising the issue with the complainant as an option.
56. In relation to additional action taken, the EA advised that the CPSS referred the matter to the School Development Service (within the EA), and the Designated Officer recommended that the school hold a multi-professional meeting to agree a clear plan of action for managing the pupil in the school environment. It explained it cannot take action against schools, and *‘the CPSS role is to advise schools and EA services on safeguarding matters’*.

## **Analysis and Findings**

57. The complainant raised concerns with this office about the EA’s failure to investigate a potential child protection and/or safeguarding concern regarding her son. Following consideration of the complainant’s concerns, I determined to

use discretion and investigate whether the EA had a responsibility to deal with her concerns as a child protection and/or safeguarding issue.

58. I note the complainant contacted several EA officers between 21 and 26 February 2018 regarding an allegation against the School. I also note the records document various reports from the complainant. However, having reviewed all of the information, I consider there is an overarching allegation that her son was secluded in a room (outside his classroom), which was locked, and he was not allowed to leave. Having reviewed the relevant guidance, I consider the action reported could potentially have had an adverse effect on the pupil's wellbeing. Therefore, I am satisfied the allegation the complainant raised ought to have been dealt with as a potential child protection and/or safeguarding concern.
59. I note the EA records refer to the room as a '*calm/quiet room*' or '*white room*'. I note there is a sensory room in the School that pupils can use when they become stimulated. I am satisfied this is not the room in which the complainant said her son was secluded. I acknowledge the complainant described the room her son was secluded in as a '*converted storeroom*' with art covering the windows and a door that could be locked from the outside.
60. I note the complainant's concern that the EA said the CPSS is a service normally used by other departments within the EA and schools. I acknowledge it is common practice for a school, rather than a parent, to raise child protection and/or safeguarding concerns with the EA. However, I would expect that regardless of how the allegation was raised, the EA would deal with the allegation appropriately. I note the EA explained that its internal structure recently changed, and the CPSS is now a service in its own right. I also note that the CPSS now has a dedicated helpline, which is available to all, including parents.
61. I note the DoH Guidance outlines the role of the CPSS within the EA, in that it '*leads on child protection/safeguarding within the education sector, with responsibility for providing safeguarding support, advice and training to schools, and to a range of other professionals employed by the EA to provide services*

*which involve direct contact with children*'. I also note the obligation the CSC Act places on the EA to co-operate with relevant authorities to safeguard children. I note the records document that when the allegation was raised in February 2018, it was progressed as a SEN matter, and as a dispute with the School. However, there is no evidence to suggest that any of the staff referred the matter to the CPSS for support and advice. There is also no evidence to suggest the EA sought clarification from the School following the complainant's reports, which would have enabled it to determine whether or not it was a child protection and/or safeguarding concern. This in turn, would have allowed the EA to meet its obligation to co-operate with other relevant authorities to safeguard the pupil.

62. I note the complainant's concern that the EA said if it were to receive a report regarding seclusion, it *'would want to clarify that with the school in the first instance'*. While I acknowledge the complainant's concern, I consider it reasonable for the EA to undertake some form of check or enquiry with a school regarding an allegation prior to making a decision on what further action, if any, may be necessary.
63. I note the EA explained that staff use their own judgement to determine whether or not a report ought to be treated as a child protection/safeguarding concern. It further explained that at the time the complainant raised her concerns, it did not have an EA specific policy outlining how to identify a child protection and/or safeguarding concern, and when it should be referred to the CPSS. I note the EA is made up of a number of different divisions. I note some correspondence between the DARS and the AAIS following the complainant's report. However, it is clear the allegation was not initially identified as a potential child protection and/or safeguarding concern. Therefore, it was not referred to the appropriate division within the EA.
64. I note the Safeguarding Board Act places a duty on the EA to *'make arrangements for ensuring that their functions are exercised having due regard to the need to safeguard and promote the welfare of children'*. I consider that by not having such a policy in place at the time, the EA failed to act in accordance with this duty. Furthermore, I consider that as the lead in child

protection/safeguarding in the education sector, EA has a duty to provide appropriate guidance to their staff outlining when an allegation ought to be referred to the CPSS as a child protection/safeguarding concern. I consider that had an appropriate policy and procedure been in place, it is likely the allegation would have been identified as such and managed appropriately. I note in its response to a draft copy of this report, the EA explained it implemented an EA Child Protection and Safeguarding Policy in October 2019. I welcome this learning.

65. I note the complainant's MP wrote a letter to the EA regarding the allegation, which it received on 27 March 2018. I am pleased to note that further to this, the matter was referred to the CPSS. However, the records document that action was not initiated until 23 April 2018, which was two months after the alleged incident occurred. I consider that had the matter been referred to the CPSS earlier, it could have sought the relevant clarification from the complainant and from the School, and made a decision as to whether further action was necessary. I consider this would have helped to allay some of the complainant's concerns at that time.
66. In response to a draft copy of this report, the complainant questioned what additional action CPSS took after 23 April 2018. The complainant specifically asked why CPSS did not investigate the concerns or refer the matter to Social Services. To enable me to respond to this query, I considered CPSS' obligations as outlined in the DoH Guidance. I note the CPSS does not have powers to investigate actions undertaken by school staff. Internal investigations regarding the conduct of its staff is a matter for a school's BOG. However, CPSS does have an obligation to provide support and advice to the School regarding safeguarding issues. I note that following internal discussions, the CPSS said it spoke with the complainant and made enquiries of the School regarding its use of the room. It also said it liaised with the SDS (within the EA) regarding the School's internal investigation. Based on the records available to me, I am satisfied that CPSS provided advice and support to the School regarding its use of the room. I am also satisfied that the SDS provided advice

and support to the School regarding its investigation of the concerns the complainant raised.

67. The DoH Guidance also outlines that CPSS has an obligation to consider reported child protection and/or safeguarding concerns, and make a decision as to whether it considers it necessary to refer the matter to the appropriate body. I note the EA explained that while it was of the opinion that the room was potentially misused, it did not consider the School's actions reached '*a level of significant harm*'. Therefore, it did not consider it necessary to refer the matter to Social Services.
68. CPSS said it failed to document and retain a record of its considerations leading to this conclusion. It also said it did not record and retain its rationale for its decision not to refer the matter to Social Services. I am critical of these failures. Without these records I am unable to effectively assess what information the CPSS obtained, and how its consideration of this led it to find that the School's actions did not meet the required threshold for referral to Social Services. Therefore, I cannot establish if the CPSS met its obligation as outlined in the DoH Guidance. Without the maintenance of such records, it is impossible for public bodies to defend its actions and the decisions it makes when challenged. I consider this failure constitutes maladministration. I acknowledge the complainant's concern regarding the decision not to refer the matter to Social Services, given the harm she considers was caused to her son by the School's actions. I also acknowledge the level of uncertainty the complainant must have experienced given CPSS' failure to provide its documented rationale for its finding. I consider that had CPSS informed the complainant of its decision and the reasons for it, it may have gone some way to allay her concerns.
69. The CPSS' decision not to refer the matter to Social Services is an example of a discretionary decision. While I identified maladministration in the process, I do not consider it within my remit to question the merits of its decision. However, given the lack of records, I will request the EA to undertake a review of the decision. This is outlined in the recommendations section of this report.



70. I note the complainant also questioned why the CPSS did not take action against the School. I note the DoH Guidance states that the CPSS has a *'responsibility for providing safeguarding support, advice and training to schools'*. I have not identified any guidance that indicates it is CPSS' role to take punitive action against any school regardless of the circumstances.
71. I note the complainant's concern that the EA said it could not take any action until the School investigated her allegation. I accept it is for the BOG of the School, and not the EA, to undertake investigations into parental complaints. However, as referred to previously in this report, I note the EA undertook several actions including providing advice to the School regarding the investigation process, and the management of the complaint. I acknowledge the role of the BOG of the school in dealing with complaints. However, I do not consider this would preclude the EA from co-operating with others to assess a child protection/safeguarding concern, as would be its obligation.
72. I note the complainant's view that the EA did not take any action regarding her concerns until she involved her MP. It is extremely concerning that given the complainant's level of contact with various divisions of the EA, information was not immediately relayed to the relevant section. It is also concerning that it was not until the complainant's MP wrote to the EA that the CPSS became involved. This points to a considerable organisational weakness in the crucial area of child protection and safeguarding.
73. The First Principle of Good Administration, 'getting it right', requires bodies to act *'in accordance with the law and with regard for the rights of those concerned'*. The Second Principle of Good Administration, 'being customer focused', requires bodies to deal with people *'helpfully, promptly and sensitively, bearing in mind their individual circumstances'*, and to co-ordinate a response with other service providers, where appropriate. This principle also requires bodies to have clear policies and procedures that should also be accurate and complete. Furthermore, the Third Principle of Good Administration, 'being open and accountable', requires bodies to provide evidence of its decision making. In dealing with the complainant's concerns regarding the treatment of her son, I am not satisfied the EA acted in

accordance with these principles. I am satisfied this constitutes maladministration and I uphold this issue of complaint.

74. I am satisfied that as a result of the maladministration identified, the complainant experienced the injustice of uncertainty, frustration and the loss of opportunity for her concerns to be dealt with at the earliest opportunity. It is for the EA to implement procedures for staff to enable it to identify and address potential child protection and/or safeguarding concerns. I will deal with a remedy for the injustice later in this report.

## **CONCLUSION**

75. The complainant raised concerns about the EA's failure to investigate a potential child protection and/or safeguarding concern regarding her son.
76. The investigation found that EA staff failed to identify the complainant's allegation, raised in February 2018, as a potential child protection and/or safeguarding concern, and take appropriate action including referring it to the CPSS within the EA. The investigation also established that by not having appropriate internal guidance to assist staff to identify a potential child protection/safeguarding allegation, and provide guidance on what action it should take in this situation, the EA failed to act in accordance with relevant legislation.
77. The investigation found that CPSS did not have powers to investigate the School's actions or to take punitive action against it. However, the EA provided advice and support to the School regarding its own investigation of the complainant's concerns. The investigation established that CPSS had an obligation to consider the complainant's report and decide whether it considered it necessary to refer the matter to the appropriate body. The investigation found that CPSS failed to document its considerations that led it to conclude that the School's actions did not warrant a referral to Social Services. It also found that CPSS failed to document its rationale for this decision. The investigation concluded that the absence of these records prevented an effective assessment of CPSS' decision.

78. I am satisfied that the maladministration identified caused the complainant to experience the injustice of uncertainty, frustration and the loss of opportunity for her concerns to be dealt with at the earliest opportunity.

### **Recommendations**

79. I recommend that the EA provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration/failures identified (within **one month** of the date of this report).
80. I also recommend that relevant staff are reminded of the importance of creating and retaining records that document the rationale for decisions made (within **one month** of the date of this report).
81. I further recommend that within **three months** of the date of this report, the EA engages an officer, with appropriate expertise in the area and who was not previously involved in the process, to review the CPSS' decision not to refer the potential safeguarding concern to Social Services. Following the review, the EA ought to provide me with its documented rationale for its decision.
82. I would have made a recommendation relating to the implementation of a policy to enable staff to identify child protection/safeguarding concerns, and when to refer the matter to the CPSS. I also would have made a recommendation relating to training for relevant staff upon implementation of the policy. However, I note the EA implemented a Child Protection and Safeguarding Policy in October 2019. I also note that in May 2020, it implemented a protocol for staff to follow when it receives a child protection/safeguarding allegation against an employee. Furthermore, the EA commenced child protection and safeguarding children training for all of its staff in January 2021, which will be repeated every three years. I welcome this learning already identified.



**MARGARET KELLY**  
Ombudsman

**March 2021**

## 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.