

DEPARTMENT OF CHILDREN, SCHOOLS AND FAMILIES
A NEW WAY OF HANDLING PARENTS' COMPLAINTS ABOUT SCHOOL ISSUES

The AJTC welcomes the Department of Children, Schools and Families' (DCSF) consultation proposals to replace the Secretary of State's role in handling parents' complaints with a more appropriate, accessible and efficient system.

The Administrative Justice and Tribunals Council (formerly the Council on Tribunals) is a non-departmental statutory body, which is responsible for keeping under review the administrative justice system and the operation of listed tribunals, under the Tribunals, Courts and Enforcement Act 2007 (TCE Act). "Listed tribunals" include adjudicators under section 25 of the School Standards and Framework Act 1998.

The TCE Act defines "administrative justice system" as the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedure for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such decisions. Therefore, the AJTC now has a greater interest in the arrangements for redress and dispute resolution as a whole rather than just those for rights of appeal.

The AJTC considers independence to be an essential prerequisite of any new approach to complaints handling. For this reason, the AJTC believes that the Local Government Ombudsman (LGO) is the appropriate body to undertake the function of providing an independent review service for schools complaints. The LGO has the necessary independence, experience and accessibility with compatible corollary responsibilities and functions given their role as a review mechanism for other local government complaints.

Conversely, the AJTC strongly opposes charging the Office of the Schools Adjudicator (OSA) with a schools complaints handling function. The OSA's existing role as an independent statutory body responsible for determining objections to admissions arrangements would not sit well with a complaints handling role, which is more appropriately an ombudsman function. Combining both functions would serve to undermine the OSA's independence, potentially damaging users' confidence in the integrity of both processes.

Q 1(a) Do stakeholders agree with these principles for the characteristics of the new service?

The AJTC generally endorses the principles suggested in the consultation paper for governing the handling of complaints, which broadly accord with best practice for complaints handling. However, the AJTC has the following reservations:

- The first principle of avoiding additional burdens on school staff, leaders or governing bodies should apply equally to Local Authorities. The proposals raise resourcing issues which are not fully explored in the consultation paper, such as funding for mediation at the school resolution stage of the complaints process.

In the absence of more detailed information about resourcing, it is difficult to envisage how the principle of avoiding burdens is compatible with the proposed improvements to complaints handling, involving the introduction of independent review. However, it is anticipated that there may be some offsetting savings as a consequence of a transparent, accessible and timely approach to dispute resolution.

- The fifth principle concerning vexatious or frivolous complaints could be problematic in the absence of any provision for a right of appeal against such a decision. The capacity to challenge the fairness or reasonableness of decisions may reduce the likelihood that complainants will seek recourse to the courts although it should not prevent them from doing so. An advantage of independent complaints handling is that vexatious or frivolous complaints are considered at arms' length from the school and in accordance with consistent principles.

The AJTC otherwise welcomes the consistency of the proposed model for handling complaints. However, there are some gaps in coverage which will need to be addressed. For example, at the present time complaints about Academies do not come under the jurisdiction of the Local Government Ombudsman, nor for that matter do their admission and exclusion appeal arrangements come within the oversight of the AJTC. For the sake of overall consistency, these omissions will need to be addressed, so that all school-related complaints and appeals can be dealt with in the same way.

Q 1(b) Are there any other important features that should be added?

As above.

Q 2(a) Do stakeholders think such statutory guidance to schools would improve the general handling of complaints?

The AJTC believes that statutory guidance would improve the general handling of complaints, so long as it is underpinned by legislative provisions and is consistent with principles of good complaints handling. For example, the statutory guidance should outline timetables and resolution methods. You may wish to have regard to the Parliamentary Ombudsman's published principles documents including 'Principles for Good Administration', 'Principles for Remedy' and the forthcoming 'Principles for Complaints Handling' when devising such guidance.

Statutory guidance will be insufficient on its own to ensure that complaints handling complies with best practice since there is already broad consensus about what best practice entails but compliance remains an issue. Schools will also require adequate training and support to assist them with this process. The training provided by the LGO for local authorities on good complaints handling may provide an appropriate model. Failing to provide training and support could lead to strict compliance with procedural guidance without regard for quality outcomes.

Q 2(b) Do stakeholders think it would be helpful to specify the ways in which governing bodies should consider complaints or to set out more clearly the principles of good complaint handling?

Both approaches would be useful. It will be important for the principles of good complaints handling to be set out clearly, supplemented by detailed practical guidance on how best to deal with complaints.

Q 3 Would stakeholders support mandatory arrangements for handling complaints?

Yes. Mandatory arrangements in secondary legislation would help to ensure that schools and their governing bodies take their complaints handling responsibilities

seriously and deal with such complaints expeditiously. However, mandatory arrangements should not be overly prescriptive.

Q 4 Would stakeholders expect the key elements of all complaints policies to contain:

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- (a) the timetable for consideration of a complaint and reaching a decision**
- (b) means to acknowledge the complaint and to show that it is being considered seriously**
- (c) what complaints are eligible to be heard and where to go if the complaint does not fall into this category**
- (d) next steps if the complainant is not satisfied at the end of the process?**

Yes to all. In addition, policies should set out the procedure for making complaints and the stages involved, how and by whom complaints will be investigated, and the need to give reasons explaining how a decision about a complaint has been made.

Q 5 The consultation considers the role of governing bodies in complaints handling. Do stakeholders agree that guidance should recommend that where complaints cannot be resolved by school staff, they should be considered by school governors?

The governing body should be the ultimate rung in the school resolution process. It is recognised that this may cause strain in some headteacher/governing body relationships, which is why legislation will be required to prescribe the new arrangements.

The AJTC considers that this complaints procedure should not be confined to complaints about bullying but should apply to all complaints of a similar nature.

Q 6 Do stakeholders consider that school staff and governing bodies are currently equipped to be able to deal confidently with complaints, understand the roles of the governing body and head teacher, and deal fairly with parents who lack confidence or experience in putting their case?

No. School staff and governing bodies will require training to handle complaints properly and in a timely manner.

Q 7 Would school staff and governing bodies benefit from specific training in dealing with complaints?

Yes. As outlined above, statutory guidance is insufficient on its own to ensure compliance with complaints handling best practice, although it is nevertheless essential given the relatively low incidence of complaints in schools which reach an accelerated level. Refresher training will also be necessary from time to time to maintain standards and skills levels.

Q 8(a) Should there be a requirement for complaints hearings to be formally clerked?

In cases where a hearing is considered necessary, it will be important that all hearings are properly clerked so that, among other things, a full record is maintained of the proceedings. Adequate funding will be required to ensure that an appropriately trained individual provides this service. It is unclear how clerking will be resourced,

given the principle of avoiding imposing a cost burden on Local Authorities as outlined in question 1(a).

Q 8(b) Should clerks to governing bodies be trained in complaints procedures so that they can provide expert support and advice to the GB?

Yes. However, as outlined above, resourcing may be an issue.

Q 9(a) Do stakeholders have views and evidence about the effectiveness of existing mediation services?

Q 9(b) Do stakeholders consider that mediation for all types of disputes between school and parent would be a useful resource and improve the likelihood of positive resolution?

Q 9(c) Do stakeholders believe that mediation would reduce the numbers of complaints which are escalated to governing bodies or not resolved at all at school level?

Q 9(d) Would parents and schools be more likely to access mediation services provided by local authorities or by other organisations?

The AJTC believes that mediation has an important role to play in settling as many disputes as possible at the earliest opportunity. The limited experience of existing mediation services suggests that its effectiveness is varied at present and there is a need for properly resourced pilot schemes to be set up to explore the potential and effectiveness of mediation in dealing with different types of disputes.

Recent SEN Disagreement Resolution Services research recommended that mediation services should be independent, which in this case would mean that they should not be run by the Local Authority. However, as many complainants are unlikely to have the means to bear the cost of private mediation, resourcing will be an issue. This was not explored in the consultation paper. The AJTC has also suggested that mediation does not unduly prolong the school stage of the complaints handling process.

Q 10 The Government also believes that there could be a role for reconciliation services which might be involved once a complaint has been formally resolved. Do stakeholders have views on the potential role of reconciliation services?

Q 11 Would parents and schools be more likely to access reconciliation services provided by local authorities or by other organisations?

The AJTC welcomes provision of reconciliation services in certain cases, although such services should be provided independently.

Q 12(a) Regarding who should be able to apply to the service – do stakeholders agree that parents, including those with parental responsibility and other carers of children and young people, and young people themselves should be able to use the service?

Q 12(b) Do stakeholders agree there should be no minimum age specified for whom should be capable of applying to the independent service?

The AJTC agrees that parents, those with parental responsibility, other carers and children themselves should all be able to apply to the proposed new independent service to handle complaints which cannot be resolved at school level. However, children will require advice, assistance and support, including an adequately resourced and independent advocacy service, to ensure that they are able to access the service and exercise their rights effectively.

Q 12(c) Do stakeholders agree that the service should have the discretion as discussed at paragraph 45 to dismiss or terminate investigation into particular complaints?

Yes, the new service should have gatekeeping discretion, but there will need to be a mechanism for disputing a decision that a complaint is vexatious. The LGO already has criteria for the exercise of discretion in similar circumstances, which should be adopted by the new service, whether or not it is located within the LGO.

Q 13(a) Do stakeholders agree that the independent service should use the criteria described above as the standard for judgement?

The service should also apply 'fair and reasonable' as an independent criterion, consistent with the practice of other complaint handling bodies.

Q13(b) Do stakeholders agree that the independent complaints service should be able to adjudicate on the merits of the original complaint as well as, if necessary, its handling?

Yes.

Q 14(a) Do stakeholders agree with the range of remedies described above and in paragraphs 50-52 of the full document?

Q 14(b) Are there any remedies not listed above which stakeholders consider should be added?

The consultation document does not elaborate upon what is meant by '*make amends*' and in particular whether this includes financial compensation. The AJTC believes that the capacity to recommend payment of financial compensation should be explored further as this may be appropriate if the complainant can establish that there has been a financial loss sustained as a consequence of a school's actions or failure to act. The LGO's capacity to recommend financial recompense for 'time and trouble', distress, delay or failure of provision etc. in other local government complaints will also require further exploration in the context of school complaints.

Q 15 Do stakeholders agree that independent complaints review service should be able to consider and act on complaints about teachers and school staff in the circumstances and in the ways described in paragraphs 53-62 of the full document?

The AJTC considers that the resolution of disciplinary matters should be separate from other complaints. Complaints about teachers and other staff may be a problematic area for the LGO because of the existing prohibition on dealing with personnel complaints. In any event, the AJTC would recommend proceeding with caution, even in the limited circumstances outlined in paragraphs 60 to 62.

Q 16(a) Do stakeholders consider that the powers of the LGO to issue reports and make recommendations would be sufficient for the complaints service?

Q 16(b) Do stakeholders consider that the Secretary of State should have a further reserve power to ensure compliance with the service's recommendations if he decided that this was required in a particular case?

The AJTC considers that the inclusion of a power to ensure compliance with the service's recommendations, whether this lies with the Secretary of State or elsewhere, would be useful.

Q 17(a) Which organisation do stakeholders think gives the best fit with the principles of the complaints service set out in paragraphs 21-28?

Q 17(b) which organisation would provide the best outcome for parents?

Q 17(c) Which organisation would command the widest credibility with schools?

Q 17(d) Which organisation would be likely to be able to organise the most efficient service from the point of view of schools and parents?

The AJTC strongly believes that the LGO is not only the best fit for undertaking the new complaints handling service, but is the only appropriate option from those identified. Review of the substance of the complaint should be an essential component of any reform of complaints handling and therefore a referrals service would not constitute a material improvement upon the current system.

As outlined above, if a review service was instituted, the LGO would be the most appropriate body to undertake this role because of its existing expertise in handling complaints about local authority services. The AJTC considers that independence, and the perception of independence, is a critical feature of an effective review service. For these reasons, we believe that the LGO would command the widest credibility with both schools and parents.

Vesting this service within the LGO would also have the advantage of eliminating the current confusion about, and overlap between, the types of school related complaints the LGO can and cannot consider.

Q 18 Stakeholders are asked whether they would prefer an independent complaints review service, an independent local referral service or neither?

The AJTC prefers an independent complaints review service. There would be little value in a service which merely refers complaints back to the governing body to reconsider their decision.

Q 19(a) Do stakeholders have any views on the best way to achieve a streamlined service?

Q19(b) Should schools be required to provide information about the different routes for complaints?

Q 19(c) Should the new service provide such information?

Q 19(d) What other services could usefully provide information for parents?

Schools' complaints policies should provide comprehensive information about their complaints procedures and processes. It should also explain how complainants can apply to the new independent review service if they remain dissatisfied with the school's response or the dispute cannot be resolved at school level.

Information about all stages of the new schools' complaints process should also be outlined in the new service's literature and web pages.

Local Authorities should provide information leaflets and online advice about all stages of the complaints process.

Q 20 Do stakeholders agree that complaints about section 409 matters which are the responsibility of governing bodies and which cannot be resolved by the governing body should be referred to the new service and not to the local authority?

The AJTC supports diverting s409 complaints from Local Authorities to the LGO.

Q 21 Do stakeholders agree that the independent complaints review service should consider complaints about specified provision for children and young people with statements of SEN?

The AJTC would welcome this, particularly in order to address instances where LAs fail to implement SENDIST decisions properly.

Q 22 Do stakeholders agree that the Secretary of State's powers of direction in relation to considering individual parent's complaints on school issues be removed from him and placed with the independent complaints review service or local referrals service?

Q 23 Should powers in relation to handling complaints about governing bodies and local authorities in breach of statutory duties or LAs acting unreasonably in respect of SEN be placed with the independent complaints review service?

Q 24 Do stakeholders have views on this approach?

The AJTC agrees that the Secretary of State's powers of direction should be transferred to the independent complaints review service. The AJTC, which has oversight of SENDIST and admission and exclusion appeal panels, would welcome the opportunity to discuss the interplay between the new complaints service and existing appeal routes. Whilst agreeing that the new service should not consider complaints where there is a statutory right of appeal, there may need to be provision for cases to be referred from one arena to another. This will need to be carefully considered.

Q25 Do stakeholders agree that we should seek to pilot the new service in the first instance?

AJTC members held diverging views about whether the new service should be piloted.

Members who favoured a pilot emphasised its value in identifying and learning from the lessons of the pilot which could facilitate improvements to the service prior to its full implementation. However, support for a pilot was prefaced upon any pilot:

- having a clear timescale which is as short as possible;
- having a clear criteria for evaluation which is determined at the outset of the pilot and rigidly adhered to during the evaluation process; and
- being conducted in a transparent fashion so that complainants both within and outside pilot catchment areas understand the reason behind differences in their complaint processes.

‘Early adoption’ of the scheme, such as that which is occurring in relation to new health and social care complaints procedures within NHS trusts and local authorities was considered an acceptable alternative to a pilot by those who favoured a pilot.

Several members opposed the pilot due to concerns that it could undermine the public’s perception of the Local Government Ombudsman’s independence and principles of equality before the law through creation of a ‘postcode lottery’, whereby some complainants would have recourse to the LGO but others would not.

An alternative approach suggested by members who opposed the pilot was to introduce the new complaints service across the board with a commitment to undertake an early review of its effectiveness, perhaps after one year.

Other general comments:

The AJTC does not support the suggestion that the complaints service should not consider complaints if there was a right of appeal to a Minister, tribunal or court.

The AJTC believes that the LGO should retain his/her discretion to accept a case even if an alternative remedy is available, but there should be a mechanism to cross refer cases to the most appropriate forum for resolving particular disputes. The Parliamentary Ombudsmen has supported cross referral mechanisms in other jurisdictions.

The AJTC supported the Law Commission’s recent proposals to remove impediments for the movement of cases between the courts and the ombudsmen, in its response to the consultation, ‘Administrative Redress: Public Bodies and the Citizen’.

Consultation document feedback:

The consultation paper could have been made simpler and clearer through the inclusion of a few flow charts, illustrating the current routes for complaints and contrasting them with the proposed changes.