

DCSF Stakeholders and Partners

15 January 2010

Dear Colleague

I am writing to inform you of changes that are being made in the handling of complaints about special educational needs (SEN) services and provision provided by local authorities from 19 January 2010.

Although, the Local Government Ombudsman (LGO) has for some time considered SEN complaints, his jurisdiction was restricted to considering the administrative actions of local authorities when discharging their statutory obligations. The Apprenticeship, Skills, Children and Learning Act 2009 (ASCL Act) introduced an amendment to the LGO's jurisdiction which came into force on 12 January 2010 and enables them to also ask local authorities for information about the provision of services made for children with statements of special educational needs in maintained schools.

This amendment removes the previous restrictions to the LGO's jurisdiction, and confusion about whether complaints about inadequate provision being made by either local authorities or schools should be investigated by the LGO or the Secretary of State for Children, Schools and Families.

We have agreed with LGO that from 19 January 2010 any correspondents contacting the Department with SEN complaints that fall within the LGO's wider jurisdiction will be advised of the new arrangements and to send their complaint to LGO for consideration. Any complaints being investigated by the Department up to 19 January 2010 will be followed through to their conclusion.

These changes are in line with recommendations made by the Lamb Inquiry that the DCSF and the LGO work together to route SEN complaints against schools and local authorities to the LGO.

I have attached a briefing agreed with LGO on the changes, including a simplified table showing types of complaint and the routes for dealing with them. If you have any queries please contact:

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Yours sincerely

A handwritten signature in black ink, appearing to read 'John Hodgson', with a stylized flourish at the end.

John Hodgson
SEN Operations Team Leader
SEN and Disability Division.

LGO extends SEN complaints handling service

Information on the extended service

Additional funding has been granted to the Local Government Ombudsman (LGO) to assist in dealing with complaints made about the provision of services for those children and young people with Special Educational Needs. Although the LGO have for some time considered such complaints, their jurisdiction was restricted to considering the administrative actions of local authorities when discharging their statutory obligations. An amendment to the LGO's jurisdiction which came into force on 12 January 2010 enables them to also ask local authorities for information about the provision of services made for children with statements of special educational needs in maintained schools.

This removes the current confusion about whether complaints about inadequate provision being made by either local authorities or schools should be investigated by the LGO or the Secretary of State for Children, Schools and Families, and aims to improve the speed in which such complaints are dealt with.

Categories of SEN complaints that can be investigated by LGO are:

- A local authority failing in a statutory duty relating to children and young people with SEN
- A local authority acting unreasonably or proposing to act unreasonably in performance of its statutory duties relating to children and young people with SEN
- The failure of a local authority or school maintained by that authority to put in place the provision specified in a child's statement of SEN
- The failure of a local authority or school to implement an order issued by the First-tier Tribunal (Special Educational Needs and Disability)
- Any complaints being received in the DCSF before 19 January 2010 will be followed through to conclusion.

About the LGO

The LGO was formed by the Local Government Act 1974 and its jurisdiction covers all English local authorities, police authorities, education appeal panels and a range of other bodies providing local services.

Sponsored by the Department of Communities and Local Government, the LGO may investigate complaints by members of the public who consider they have experienced maladministration by authorities within the LGO's jurisdiction.

The LGO currently looks into complaints about education matters that are the responsibility of a local authority and has a role in school admissions, appeals against permanent exclusions and certain non-current special educational needs (SEN) cases where these relate to the functions of the local authority. The Ombudsman is however, currently prevented from making enquiries of local authorities about any matter which could be said to relate to the internal organisation or management of a school, with the exception of those matters which relate to SEN.

Some key features of the LGO service include:

- Having the same powers as a High Court judge in respect of production of documents, and the attendance and examination of witnesses
- It has a well known and established reputation
- Being a free, independent and impartial service
- Recommending remedies if they find fault which caused injustice, including:
 - action to be taken by the relevant body
 - compensation if appropriate
 - changes to systems to prevent future problems

Limited powers of DCSF

Although the Secretary of State for Children, Schools and Families has powers under sections 496 and 497 of the Education Act 1996 to consider complaints that a local authority or governing body of a maintained school is or has been acting illegally or unreasonably in respect of a statutory power or duty conferred on the local authority or governing body by education law, his powers are limited

- He may make a declaration of default (under section 497 only) and give directions. For the Secretary of State to uphold a complaint, he must be satisfied that:
 - there has been a breach of a specific education duty by the local authority or governing body of the school; or
 - the local authority or governing body is acting or proposing to act unreasonably in the strict legal sense of the word (i.e. in a way in which no reasonable local authority or governing body would act in the circumstances).
- For the Secretary of State to give a direction he must also be satisfied that it is expedient for him to do so. In other words, he must be satisfied that there is a sensible remedy available to him. In practice, this means that except where there is a clear breach of a specific duty there are few occasions when the Secretary of State is empowered to intervene. The complainant may have strong grounds for complaint, but their case is hampered if there is no readily identifiable education duty to which the complaint can be attached. Or, the local authority or governing body may have acted in a way which is unsatisfactory, but the behaviour was not so unreasonable that it would meet the strict legal threshold.
- The Secretary of State has no powers to issue an order directing an authority to rectify past matters; ask an authority to apologise; or order an authority to pay compensation.

Effect of the Apprenticeship, Skills, Children and Learning Act 2009

Following consultation the Government introduced legislation through the Apprenticeship, Skills Children and Learners Act 2009 (ASCL Act), which received Royal Assent on 12 November 2009. This legislation extends the remit of the LGO to consider complaints about the internal management of schools in respect of SEN matters in the first instance. The wider remit for LGO to consider complaints made about schools will be implemented in

stages, and there will be further information in due course about these arrangements.

The commencement of part of the ASCL Act enables the LGO to investigate all parental complaints about provision for children with statements of special educational needs, which was previously restricted by the Malone judgement ([2006] EWHC 2847(Admin)) where in carrying out its investigations the LGO would have to investigate the actions of a school.

There are no changes to the following:

- Complaints about local authority services for children which cannot be resolved by the local authority are for the LGO to consider
- Independent appeals and panels which consider admissions and permanent exclusions still come within the jurisdiction of the LGO
- Where there are prescribed rights of appeal to the First-tier Tribunal (Special Educational Needs and Disability) – the LGO would normally expect an individual to use their right of appeal rather than complain to them. So whilst the LGO will consider complaints of inadequate provision having been made, they would expect a dispute about the nature of the provision specified in a Statement to be heard by the First-tier Tribunal in accordance with its remit.

Disputes between local authorities and schools about the admission of a child with a statement of SEN. i.e. where a local authority complains a school is failing in a statutory duty to admit a child where the school is named in the child's statement of SEN, or where a school complains a local authority has acted unreasonably by naming the school in a child's statement, **do not** fall within the remit of the LGO and for the time being will be handled by the Department for Children, Schools and Families.

Advantages

By moving the parents' complaints service with the LGO has several significant advantages:

- The LGO is a long-established and well-known body with wide-ranging powers of investigation and a presence in all the regions
- It is acknowledged as independent of local and central government, has expertise in education issues and is highly experienced in enquiring into the decisions of a range of public bodies
- Extending the remit of the LGO will bring together the arrangements for unresolved complaints on a wide range of services affecting children of school age. This would assist, for example, in the handling of complaints about SEN where there is confusion between the most appropriate route between the LGO and the Secretary of State
- For parents of children with SEN it will improve handling of complaints together with the assurance of timely and effective intervention to require statutory provision.

Further information is available from:

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Type of Complaint	Route for dealing with complaint
My LA won't undertake an assessment for my child	Parent has the right of appeal to First-tier Tribunal (Special Educational Needs and Disability) ["the Tribunal"]
My LA won't issue a statement for my child	Parent has the right of appeal to the Tribunal
I have received a statement from my LA and I don't agree with: the description of my child's SEN and/or the provision specified to meet their needs and/or the school the LA have named.	Parent has a right of appeal to the Tribunal
The LA won't name the school I want in my child's statement	Parent has a right of appeal to the Tribunal
My child's school are not providing for my child's SEN.	<p>In the first instance the parent should discuss with the school (and the local authority if the child has a statement of SEN).</p> <p>The parent might also wish to contact the local authority's Parent Partnership service, which can provide support and advice to parents of children with SEN.</p>
I have complained to my child's school and the LA but provision is still not being made to meet his SEN	<p>If the child does not have a statement and the parent feels their child is not receiving all the help and support they need then the parent can ask the local authority to undertake a statutory assessment of their child's needs. If the local authority refuse to undertake an assessment or undertake an assessment but refuse to issue a statement the parents have a right of appeal to the Tribunal.</p> <p>If the child has a statement and the provision specified in the statement is not in place then the parent can make a complaint to the LGO.</p>
The provision specified in Part 3 of my child's statement is not being provided (e.g. LSA support, Speech and Language Therapy etc)	The parent may complain to the LGO to investigate with LA maintaining the statement.
My child has SEN and the school is discriminating against him.	Parents should discuss the issues with their child's school and, if necessary, follow the school's complaints procedures. If they remain dissatisfied they may have right of appeal to the Tribunal under the Disability Discrimination Act (DDA) if their child is disabled within the meaning of that Act –

Type of Complaint	Route for dealing with complaint
	not all children with SEN are disabled.
The LA have failed to change my child's statement as ordered by the Tribunal.	The parent may complain to the LGO to investigate with LA maintaining the statement.
The LA have failed to implement an order of the Tribunal (i.e. an order for the LA to amend the child's statement or take action following a discrimination claim under the DDA.)	The parent may complain to the LGO to investigate with the LA.
The school has failed to implement an order of the Tribunal (i.e. to take action following a discrimination claim under the DDA.)	The parent may complain to the DCSF to investigate with the school.
The school named in my child's statement is refusing to admit him.	The parent should discuss with the local authority maintaining their child's statement and if necessary the local authority will refer the matter to the DCSF.
A LA is adopting a blanket policy e.g. not specifying/quantifying provision in statements; failing to provide lists of independent/NMSS schools with a proposed statement; operating a blanket policy in terms of criteria for assessment or in the way they fund SEN.	<p>If the complaint is from a parent, parental advocate or the child and the actions of the LA have caused injustice to an individual they may complain to the LGO to investigate with LA.</p> <p>If it is a general complaint about a local authority not related to an individual they may complain to the DCSF to investigate with LA.</p>