

Fee-related parental complaints

1 Background

- 1.1 As a result of the Covid-19 pandemic, schools have been restricted in their ability to offer on-site services since at least 20 March 2020. Independent schools have, in the main, opted to maintain continuity of service through remote educational provision.
- 1.2 A range of approaches were taken by schools towards fee levels for the summer term 2020. These have reflected a careful balancing of practical, legal and commercial issues at each school/group.
- 1.3 Decisions on fees/discounts have usually been taken at board level.
- 1.4 These unprecedented circumstances have given rise to a higher than usual number and level of parental challenges, concerning service delivery and fees, some overtly expressed as fee disputes and some as complaints.
- 1.5 The question arises as to the means by which such issues should be addressed. This note considers the application of a school's parental complaints policy to fee-related issues.

2 Regulatory complaints handling standard

- 2.1 Independent Schools are registered on the basis that they will meet the minimum standards set out in the ISSR. Part 7 sets out the applicable standard relating to complaints handling. It requires that a complaints procedure is drawn up and effectively implemented which:
 - 2.1.1 Is in writing and made available to parents.
 - 2.1.2 Sets clear time scales for the management of a complaint.
 - 2.1.3 Provides for an informal stage, a formal stage and an independent review stage by a 3 person panel.
- 2.2 ISI's commentary on the regulatory standards (the Commentary) provides:

"557. The primary purpose and requirement of the policy is that it deals with complaints. The standard does not distinguish between 'concerns' and 'complaints'. Changes to the wording made in January 2015 resolved this issue. Any matter about which a parent of a pupil is unhappy and seeks action by the school is now a complaint, and in the scope of the procedure, whatever the school labels it as.

558. Attempts to limit matters to be dealt with under a school complaints procedure can put policies at risk of not meeting the fundamental requirement of the standard, namely, to deal with complaints. In such instances, inspectors will consider, for example, whether the relevant wording is there to provide helpful clarification to parents about the most appropriate dispute resolution process within the school procedures or whether the true purpose of such wording could be to limit the availability of the statutory complaints process to parents."

- 2.3 ISI has recently updated its webpages with some coronavirus-themed FAQs, which include the following additional guidance on this issue:

"In the current circumstances, the complaints policy provides an important opportunity for schools to address any issues sensitively, with a view to amicable resolution. The DfE has therefore advised that it is open to parents to use the school complaints process as a vehicle for addressing disputes about fees. The Commentary on the Regulatory Requirements will be updated in due course to clarify this point."

- 2.4 It is also notable that ISI says further down its FAQs that:

"Issues relating to fees are not within the remit of ISI. They are a contractual matter for discussion between parents and schools."

- 2.5 Additionally, the DfE's guidance on complaints handling (advisory only for independent schools) permits schools to refuse complaints which are 'vexatious'. In doing so, the DfE seems to be comfortable that schools can exercise discretion over the application of their complaints procedures and legitimately consider questions of utility and good faith - both aspects of a vexatious complaint - in determining whether or not a parent can access a school's complaints procedures on a case by case basis.

3 How should a fee dispute be classified?

- 3.1 Part 7 and the Commentary are silent as to the existence or exercise of any discretion by a school in whether or not to apply its complaints procedure, subject only to the qualification that it is:

- 3.1.1 a matter about which a parent is unhappy; and
- 3.1.2 is seeking action by the school.

- 3.2 Rather than granting an almost unfettered parental right to access the complaints procedures, we interpret this as meaning that schools should not uniformly exclude complaints which relate to fees.

- 3.3 The Commentary and FAQ response above, suggest that schools can consider the suitability and efficacy of the complaints procedure as a means of dispute resolution. Schools should consider how best to resolve issues and it is our view implicit in this that there may be instances where a school's complaints procedure will not be appropriate.

- 3.4 Issues concerning fees are fact-sensitive and will often have at their core operational issues regarding the provision of education and pastoral care to a particular child or cohort. Where these issues are raised, a school's complaints procedure is likely to offer a suitable mechanism to establish the facts, determine the issue and consider a suitable resolution and it is likely to be appropriate to use it.

- 3.5 Where concerns are first raised in the context of credit control or debt recovery, decisions about the application of the school's complaints procedure will need to be considered carefully to determine how best to manage the particular issue. This may include consideration of whether or not the parent has raised the issue solely in order to achieve a discount (which is outside the remit of a complaints procedure and where the parent has a legitimate alternative process, through the court route, to have their concerns independently considered).

- 3.6 We have also seen a number of complaints and disputes raised by parents which concern the decision-making of whole governing bodies concerning fee levels for the summer term (and we anticipate more for the autumn term ahead). Such complaints raise issues both as to the parent's standing to participate in such a complaint (is this simply a commercial decision for the school? would the school deal with a complaint about the level of its usual fees through the complaints process?) and as to the suitability and efficacy of the complaints procedures in addressing it (how can an internal process look at decision-making by the whole board?).
- 3.7 Board-level decision making is governed by a separate legal framework and for those schools which are charitable by a separate regulator (being the Charity Commission). In such cases, it may be appropriate for concerns to be reported on to the board for consideration, but to decline engagement with the parent under the school's complaints procedure. The board can then take a decision on whether action is required and specifically on whether an internal or independent review is appropriate. Schools could also signpost in their correspondence and/or complaints procedures a parent's right to raise any such matters with the relevant regulatory bodies e.g. the Charity Commission.
- 3.8 Issues relating to value for money are often raised in this context and should be considered carefully in order to determine whether this is an issue which properly relates to the standard of the service supplied by the school to a child or children, or whether it is a response to the school's pricing and the discount made to reflect the remote nature of its offering.
- 3.9 Complaints concerning matters which are not personal to the parent, or other 'points of principle' raise similar issues of standing and efficacy.

4 Advice

- 4.1 Schools should consider correspondence from parents raising fee disputes and complaints carefully with reference to their complaints procedures and follow these, as appropriate. Most will be written in broad terms which do not expressly exclude issues associated with fees.
- 4.2 There is a clear risk of a finding of material non-compliance with Part 7 if a school's complaints policy is written in terms which seek to limit its scope or exclude certain subject matter without good reason. Equally, there is a risk of non-compliance if a school does not follow its own complaints policy. Any decisions taken to depart from a school's complaints policy should therefore be taken on a case by case basis and should be carefully communicated and documented.
- 4.3 Nevertheless, we consider it reasonable for schools to retain some discretion concerning the application of their complaints procedure to fee issues, in particular concerning legitimate questions of efficacy and suitability and good faith. The existence of other mechanisms by which a parent can pursue their concerns will be relevant here.
- 4.4 In practical terms we suggest that schools reserve the right to determine whether or not their complaints procedures are a suitable means of dispute resolution in any given case and will apply; whether an alternative procedure could be offered; or whether the school could (with good reason) refuse to deal with a complaint altogether. As Covid-related fee issues are novel, where current complaints policy documents do not have such flexibility, schools might consider adding a Covid addendum to address this issue.

- 4.5 Should you have any queries about any of the issues raised, please do not hesitate to contact Tabitha Cave or James Garside.

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