

Scottish Parliament Region: South of Scotland

Case 200502369: South Ayrshire Council

Summary of Investigation

Category

Local government: Recreation and Leisure, Complaints handling

Overview

The complainant (Mrs C) was banned indefinitely from attending a swimming pool run by South Ayrshire Council (the Council) following an incident with a swimming instructress on 9 December 2004. Her husband, Mr C, pursued a complaint to the Council on her behalf, the outcome of which was delayed by action taken by the Instructress. After giving written assurances, Mrs C's ban was lifted in June 2005.

Specific complaints and conclusions

The complaints from Mrs C that I have investigated are that:

- (a) the Council failed to address and properly investigate the complaint made on Mrs C's behalf against the Instructress (*not upheld*);
- (b) the decision to ban Mrs C from the Pool was precipitate and was taken without hearing her account (*partially upheld*); and
- (c) after being informed of the Procurator Fiscal's decision in relation to a report by the instructress, the Council did not re-examine conflicting accounts of members of staff relating to the incident (*not upheld*).

Redress and recommendation

The Ombudsman recommended that a suitably worded apology be issued in respect of the initial letter sent to Mr C and this was done before this report was published. The Ombudsman also recommended that steps should be taken to avoid a repetition.

Main Investigation Report

Introduction

1. The complaint which was received by the Ombudsman on 25 November 2005 arose from an incident at a Council run swimming pool (the Pool) on 9 December 2004 during a swimming lesson where the complainant (Mrs C) remonstrated with her daughter's swimming instructress (the Instructress). As a result the Instructress submitted a violent incident report and the complainant's husband (Mr C) complained to the Council on his wife's behalf. The matter was also subsequently reported to the police by the Instructress. Mrs C was aggrieved that she had effectively been banned indefinitely without the Council hearing her account.

2. The complaints from Mrs C which I have investigated are that:

- (a) the Council failed to address and properly investigate the complaint made on Mrs C's behalf against the Instructress;
- (b) the decision to ban Mrs C from the Pool was precipitate and was taken without hearing her account; and
- (c) after being informed of the Procurator Fiscal's decision in relation to a report by the Instructress, the Council did not re-examine conflicting accounts of members of staff relating to the incident.

Investigation

3. The investigation is based on information provided by Mrs C and the Council. The relevant evidence is recorded below. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Both Mrs C and the Council have had the opportunity to comment on a draft of the report.

4. Mrs C's complaint arises from events in the late afternoon of Thursday 9 December 2004 when their eight year old daughter (Miss C), attended a swimming class at a swimming pool (the Pool). The class was scheduled to have been taken by Miss C's regular instructress. It was taken instead by another instructress (the Instructress). There had been a previous incident some two years earlier when the Instructress had given Miss C swimming lessons. That previous incident turned on differing perceptions of Miss C's swimming ability.

5. Mrs C and Miss C arrived at the poolside late for the start of the class. According to Mrs C, on her arrival, her daughter was left shivering at the poolside while the Instructress dealt with other children in the class. Mrs C said her daughter was asked to do a test which Mrs C felt to be unnecessary. Mrs C said she intervened on at least four occasions to have her daughter integrated into the class. After Mrs C's fourth intervention, the Instructress allegedly informed Mrs C that she was not prepared to teach Miss C. Miss C remained by the pool.

6. Mrs C went to the pool office and then to the front desk to complain, but found no-one there. Mrs C then went back to the poolside and engaged in conversation with another instructor. She said that, while talking, the Instructress approached her and purposely barged into her. After the incident, Mrs C and Miss C left the Pool.

7. The Instructress submitted a violent incident report, which stated that Mrs C's behaviour had been aggressive, that she had shouted at the Instructress, and had allegedly pushed her. While the date of the incident is given, the Instructress did not date her signature on the form. Two other members of the Pool staff submitted statements which are dated 10 December 2004. A further member of staff provided a witness statement dated 27 January 2005. These four statements concur that Mrs C's behaviour was threatening and that she raised her voice to staff.

8. On 10 December 2004, Mr C wrote to the Council. He received a letter in reply of 15 December 2004 from the Council's Swimming Development Co-ordinator (Officer 1). Officer 1 stated that he had had a Swimming Development Officer investigate the complaint. He said that statements taken from staff on duty at the Pool on the evening of 9 December 2004 confirmed that Mrs C had tried to push the Instructress into the pool and that Mrs C had verbally abused the Instructress and pool supervisor. Officer 1 said that he regarded this behaviour as totally unacceptable and stated that he had no alternative but to request that Mrs C did not attend the Pool. He considered that alternative arrangements should be made for Miss C to continue attending swimming lessons. Officer1 offered a meeting to discuss the matter.

9. As a result of Mr C's letter, the Council's Sports and Leisure Services Manager (Officer 2) completed a disciplinary procedures incident report on the complaint by Mr C regarding events on 9 December 2004.

10. On 20 December 2004, Mr C replied to Officer 1. He complained that his daughter had been bullied and humiliated by the Instructress. He indicated that the Instructress should apologise to his daughter, and that disciplinary action should be taken against the Instructress. The family wished a refund for the swimming lesson. Mr and Mrs C also requested an interview with Officer 1's superior whom, they said, had dealt with the previous incident.

11. A meeting with Officer 1 arranged for 23 December 2004 in Ayr was cancelled, however, on 12 January 2005, Mr and Mrs C met with Officer 1, Officer 2, and a Personnel Assistant (Officer 3). Prior to the meeting, Officer 2 telephoned Mr and Mrs C to say that he understood the Instructress was going to the police and it would not, therefore, be possible to discuss allegations of assault.

12. A minute of the meeting was prepared the following day (13 January 2005). The minute records that matters relating to the Instructress' conduct when engaging with Miss C were discussed. Mrs C also raised her concerns about the letter from Officer 1 banning her from the Pool. It was clarified that Miss C was not banned and that she could continue with her swimming lessons there or alternatively at another Council facility in Ayr. It was further confirmed that the Instructress intended to report an alleged assault to the police the day following the meeting.

13. The Instructress went to the police on 14 January 2005 to report the incident of 9 December 2004.

14. Prior to receiving a copy of the minute of the meeting, Mr C wrote to the Head of Enterprise, Tourism and Leisure (Officer 4) on 16 January 2005. He accused Officer 2 of not being impartial. He also referred to his daughter having been bullied at her previous school and that she had had to move school. This he said had made the incident of 9 December 2004 so upsetting for Mrs C to watch. Mr C stated that he considered Officer 2 had accepted statements made by others and had coached the Instructress to go to the police. He also expressed concern that

Officer 2 had not put any timeline on his wife's ban from the Pool. Mr C said that when he had tried to book the next swimming lesson for his daughter at the Pool he was refused and he had been asked to contact Officer 1. He expressed concern that his daughter had not attended swimming classes for five weeks and was perturbed at differing statements given about his daughter's swimming ability. Mr C requested a meeting with the Director of Enterprise, Tourism and Leisure (the Director).

15. Mr and Mrs C received a copy of the minutes of the meeting on 21 January 2005 and wrote back to Officer 2 on 24 January 2005 with detailed comments.

16. In early February 2005, Mrs C's allegations against the Instructress were investigated as a disciplinary issue. The Instructress was interviewed on 4 February 2005, and the three other members of staff were interviewed on 10 and 11 February 2005. Telephone contact was made with three parents. A report by Officer 1 found no corroboration of Mrs C's allegations from other employees or from the three parents. He concluded that there had been no indication of misconduct by the Instructress.

17. On 23 February 2005, Officer 2 responded to Mr and Mrs C. He stated that a very full investigation had been carried out which had failed to show any evidence which corroborated Mr and Mrs C's allegations. He proposed, therefore, to take no further action in connection with the matter. He thanked Mr and Mrs C for their co-operation during the investigation process.

18. Mr and Mrs C wrote to the Director on 28 February 2005 stating that they found Officer 2's letter totally disrespectful. He had not stated whom he had spoken to in investigating the matter and had not addressed Mr and Mrs C's concerns following the 12 January 2005 meeting. They raised the timing of the Instructress going to the police and expressed serious concern about Officer 2's integrity.

19. The Director acknowledged receipt of this letter on 4 March 2005 and replied to Mr C on 15 March 2005. The Director stated that he had reviewed the investigation process and associated outcomes. He was satisfied that the

investigation had been conducted in a proper, impartial and comprehensive manner and that Officer 2's decision was consistent with the resulting evidence. The issue of the length of Mrs C's ban would, he said, require to await the outcome of police investigations. He mentioned that special arrangements had been put in place to ensure that Miss C could continue to take part in swimming lessons. The Director also stated that the Council had not received Mr C's observations on the minutes of the 12 January 2005 meeting until 28 February 2005 when it was enclosed as an attachment to his letter.

20. Officer 2 wrote to Mr and Mrs C on 21 March 2005 informing them that a place for Miss C had been reserved for the next course of lessons at the Pool.

21. Mr C submitted an e-mail to the Chief Executive on 22 March 2005 complaining that, after three months, he still had not received answers to his complaint. He stated that he understood that the Procurator Fiscal had not pursued the Instructress' report of the incident. He expressed surprise that no record of their previous complaint regarding the Instructress could be found.

22. The Chief Executive acknowledged receipt on 29 March 2005 saying that the matter would be dealt with under the Council's complaints procedures. Officer 2 responded by e-mail on 31 March 2005 to points raised by Mr C. He stated that the Instructress had not refused to teach Miss C; that other staff recollected shouting and bodily contact; and that it was the right of the Instructress to report her complaint to the police at a time of her choosing. He had not at that time had confirmation from the Procurator Fiscal that they would not progress the allegation of assault made against Mrs C. (This came in an e-mail from the police of 29 April 2005 who said that a letter had been sent from the Procurator Fiscal to Mrs C in March 2005.)

23. After obtaining sight of the witness statements as a result of a Freedom of Information request, Mr and Mrs C contacted Officer 2. He wrote to them on 7 June 2005. Mr and Mrs C then had a meeting with a Principal Sports Officer (Officer 5). Agreement was reached to allow Mrs C to return to the Pool with her daughter from 9 June 2005 after she signed an agreement to comply with a number of conditions relating to her future conduct. The Council said that the reason for this decision was to attempt to seek closure on the matter and to return

to a normal service/customer relationship. A further two hour meeting, attended by Mr and Mrs C and Officer 2 and two of his colleagues, was held on 16 June 2005.

24. Mr and Mrs C, however, pursued the complaint to the final stage of the Council's procedures, namely review by the Chief Executive. The Chief Executive wrote to Mr and Mrs C on 9 November 2005.

25. The Chief Executive's letter of 9 November 2005 began with an apology for the delay in his final response and welcomed the fact that agreement had been reached to enable Mrs C to return to the Pool to attend her daughter's swimming lessons. He set out his assessment of the background, stated that staff at the Pool had submitted violent incident forms outlining their view of the incident on 9 December 2004, and that matters had been complicated by the complaint Mr and Mrs C had submitted and the Instructress reporting the incident to the police in January 2005. The Chief Executive concluded that, in his view, the handling of Mr C's letter of complaint had been correct and timely. He appreciated that while Mr and Mrs C did not agree with the outcome, the management comprehensively examined all issues before reaching their conclusion. As a point of new information he stated that CCTV equipment had been installed at the Pool as well as other facilities to better monitor activity and security. He concluded by stating that it was open to Mr and Mrs C to refer the matter to the Scottish Public Services Ombudsman.

26. Mrs C submitted a complaint to the Ombudsman on 11 November 2005. She stated that the Council failed to address her complaints regarding the Instructress and that, without talking to Mrs C, they had banned her indefinitely from taking her daughter to swimming lessons at the Pool. She claimed that the Council had not investigated why statements about the incident from other staff differed. Mrs C claimed that this had affected her emotionally and that she had lost out in seeing her daughter progress in her swimming. She stated that she was not guilty of a violent act and that this had been concluded by the Procurator Fiscal who had refused to pursue the matter.

27. Enquiry of the Council was made by letter of 2 March 2006 and they responded in 29 March 2006, providing a statement by the Head of Environment

and Resources (Officer 6) on behalf of the Council and a comprehensive file of documents. Officer 6 responded to the three heads of complaint as follows:

(a) the Council failed to address and properly investigate the complaint made on Mrs C's behalf against the Instructress

Officer 6 stated that Mr C's complaint on behalf of his wife concerning the Instructress was investigated in accordance with Council procedures but no evidence was found to substantiate the allegation made by Mrs C.

(b) the decision to ban Mrs C from the Pool was precipitate and was taken without hearing her account

Officer 6 confirmed that the decision to ban Mrs C from the Pool was initially taken without hearing Mrs C's account. This was, however, considered necessary given the apparent nature of the incident as determined from various witness accounts, and the duty of care on the Council to provide a safe environment for staff and service users. Timescales were such that a decision had to be taken in advance of having heard Mrs C's account but the correspondence advising of exclusion offered the opportunity for discussion on the matter.

(c) after being informed of the Procurator Fiscal's decision in relation to a report by the Instructress, the Council did not re-examine conflicting accounts of members of staff relating to the incident

Officer 6 maintained that the accounts of members of staff at the Pool were consistent and were not conflicting. After becoming aware of the Procurator Fiscal's decision, a meeting was arranged with Mrs C to consider her account of the incident. No reason was identified to the Council at that meeting which in their view required a re-examination of previous accounts by staff. By that time, steps had been taken to enable Mrs C to attend the facility on specific terms which Mrs C had agreed to in writing

(a) *Conclusion*

28. I find nothing to criticise in the Council's actions in investigating the complaint. The investigation of the matter as a disciplinary matter against the Instructress is outside the jurisdiction of Ombudsman in terms of section 8 and paragraph 8 of schedule 4 of the Scottish Public Services Ombudsman Act 2002. I do not uphold this complaint.

(b) Conclusion

29. While not questioning the decision by Officer 1 to exclude Mrs C, I believe that the wording of his letter was unfortunate and could have been more diplomatically worded. In effect, Mrs C was found guilty of totally unacceptable behaviour without being asked for her version of events. In the last resort, and on the balance of evidence, there is corroboration that Mrs C's behaviour on the evening of the incident was not appropriate. In the event Mrs C was excluded from accompanying her daughter for six months. I partially uphold this complaint.

(c) Conclusion

30. The Council correctly resumed consideration of the matter following the confirmation of the decision of the Procurator Fiscal and after Mr C had exercised his rights under the Freedom of Information Act. Further pursuit of the matter had the consequence that Mrs C was permitted, following her acceptance of conditions, to return to the Pool. I do not uphold this head of complaint.

(a) to (c) recommendations

31. The Ombudsman recommended that a limited apology be offered for the wording of the letter of 15 December 2004 and steps taken to avoid a repetition. A letter of apology was sent to Mr C by the Head of Lifelong Learning on 4 September 2006.

31 October 2006

Explanation of abbreviations used

Mrs C	The complainant
Mr C	The complainant's husband
Miss C	The complainant's daughter
The Council	South Ayrshire Council
The Pool	The swimming pool Miss C attended
The Instructress	The swimming instructress who took Miss C's class on 9 December 2004
Officer 1	The Council's Sports Development Coordinator
Officer 2	The Sports and Leisure Services Manager
Officer 3	Personnel Assistant
Officer 4	Head of Enterprise, Tourism and Leisure
The Director	The Director of Enterprise, Tourism and Leisure
Officer 5	Principal Officer, Sports Facilities
Officer 6	Head Of Environment and Resources