

**Case 200501285: West Lothian Council**

**Summary of Investigation**

**Category**

Local government: Community and Support Services

**Overview**

The complainant (Mr C) raised a number of issues involving the care of his late uncle. Mr C complained about an inappropriate relationship and subsequent bequest of property to a social work employee. He also complained about the employee's involvement in the purchase of a council house and the making of a Will.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) West Lothian Council (the Council) breached their policies and the Care Commission guidelines on caring for vulnerable clients in relation to the making of Wills, the purchase of a client's house and the acceptance of gifts (*not upheld*);
- (b) the Council failed to adequately respond to Mr C's representations (*not upheld*); and
- (c) the investigation carried out by the Council into the case was inadequate (*not upheld*).

**Redress and Recommendation**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 7 September 2005 the Ombudsman received a complaint from a man (referred to in this report as Mr C) on behalf of one of his uncles. Mr C complained that the Council's policies and procedures were inadequate to protect vulnerable clients. He alleged that Council Officers were inappropriately involved in the affairs of another of his uncles (Mr B), prior to his death. He complained that the subsequent investigation by the Council into the matter was inadequate.
2. The complaints from Mr C which I have investigated are that:
  - (a) the Council breached their policies and the Care Commission guidelines on caring for vulnerable clients in relation to the making of Wills, the purchase of a client's house and the acceptance of gifts;
  - (b) the Council failed to adequately respond to Mr C's representations; and
  - (c) the investigation carried out by the Council into the case was inadequate.

### **Background**

3. Mr C's late uncle (Mr B) was elderly and had been housebound for a number of years prior to his death in May 2005. He had received an intensive care at home service from the Council's Domiciliary Care Service, which involved providing care seven days per week, four calls per day with two carers at each call.
4. On 21 May 2002 Officer 1 contacted her Team Leader (Officer 2) to report, in accordance with the Council's policy, that Mr B had asked her to obtain the necessary forms to enable him to purchase his council house.
5. Officer 2 contacted Mr B and, with his agreement, contacted a solicitor who visited Mr B at his home to progress his request.
6. On 17 February 2003 Officer 1, in accordance with the Council's guidelines, reported to Officer 2 that Mr B had informed her that he was going to leave his home to her in his Will.
7. On 5 March 2003 Officer 1, Officer 2 and the Domiciliary Care Manager (Officer 3) met with Mr B to explain that this was inappropriate. Mr B confirmed

that this was his intention and decision and that he intended instructing his solicitor to draw up the necessary paperwork. Mr B was advised that the Council had a duty to protect Officer 1 from any allegations or concerns which could be made at a later date. An incident report was completed which was discussed with the Council's Human Resources and Legal Services. I have been provided with a copy of the note of this meeting.

8. On 23 March 2003 a decision was taken to remove Officer 1 as Mr B's permanent carer.

9. On 16 April 2003 Officer 2 and Officer 3 met with Mr B to explain that Officer 1 would be replaced with an alternative carer and the reasons for this.

### **Investigation**

10. The investigation of this complaint involved examining all documents and correspondence provided by Mr C, and written and telephone enquiries were made of the Council. I discussed the complaint with Mr C. I also examined the Care Commission's National Care at Home Standards for Registration and Inspection as well as the Care Commission's Inspection Report of the Council's Domiciliary Care Service.

11. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

### **(a) The Council breached their policies and the Care Commission guidelines on caring for vulnerable clients in relation to the making of Wills, the purchase of a client's house and the acceptance of gifts**

12. The Council provided me with copies of the relevant policies they have in place to protect both clients and Council staff. In particular, I considered their guidelines on 'Protecting Vulnerable Adults: Interagency Guidelines'. The Council indicated that training on the guidelines had recently been provided to all staff, including front-line carers. I also considered the 'Guidelines for Personal Care Workers whose work involves them dealing with finances and handling money'. These guidelines provide guidance to front-line carers when having to assist a client with financial matters. They also give guidance on the handling of offers of

gifts and the involvement in the preparation of a client's Will. (A full list of the Council's policies are detailed in Annex 2). The Council explained that the policies and procedures were regularly reviewed and updated, and reflected the Scottish Social Services Council Codes of Practice for Social Services Workers and Employers, and the Care Commission's National Care at Home Standards for Registration and Inspection.

13. During my investigation I was advised that the Care Commission had recently carried out an inspection of the Council's Domiciliary Care Service. Their inspection had looked at whether the service being provided by the Council met certain National Care Standards for Care at Home and Housing Support Services. During the inspection the Care Commission looked at a number of the Council's procedures and policies. They identified various strengths including the fact that the Council had policies in place in relation to the protection of vulnerable adults. No areas of concern in relation to the Council's policies and procedures were identified.

14. Part of Mr C's complaint concerned his allegation that Officer 1 and Officer 2 had advised Mr B to purchase his council house. He stated that, as Mr B had been living in his council house on full Housing and Council Tax Benefit there was no benefit to him from purchasing his council property. Mr C also alleged that the officers were inappropriately involved in the subsequent transaction. In particular, he was concerned that the bank drafts for the purchase of Mr B's house had been signed by Officer 1 and Officer 2. He also alleged that the Council's policy had been breached in relation to the making of Mr B's Will. Finally, he contended that it was inappropriate that Officer 1 had benefited from Mr B's estate.

15. The Council took these allegations very seriously and reported that, having carried out an investigation into the case, there was no evidence to suggest that either Officer 1 or Officer 2 were inappropriately involved or that they had advised Mr B to purchase his council house.

16. The Council explained that a personal care worker, as part of their job, will become involved in dealing with the finances of their clients which is why one of the Council's policies provided guidance to carers on this matter. In this case the house purchase occurred at the same time as Domiciliary Care Staff were seeking

advice from Human Resources and the Council's Legal Services about what action, if any, should be taken in response to Mr B's proposal to leave his home to Officer 1. However, the Council confirmed that Officer 1 and Officer 2 followed procedures when assisting Mr B with the bank drafts for the purchase of his home. Two members of staff witnessed the transactions, with the bank drafts being directly payable to Mr B's solicitor. Prior written authorisation was obtained from Mr B in accordance with Council policy.

17. I note Mr C's concern that Mr B did not use his usual solicitor for his house purchase, however, the Council have explained that the firm of solicitors were chosen due to their locality to the local office. The solicitors were approached with the approval of Mr B. Although I accept that the solicitor used may not have been Mr B's usual solicitor I have seen no evidence that Mr B had any concerns about the choice of solicitor. I am also aware that Mr B's solicitor advised the Council that he had no concerns regarding Mr B's mental capacity to manage his own affairs.

18. During my discussions with Mr C he raised his concern that no member of Mr B's family had been involved in the meeting between Council Officers and Mr B to discuss the purchase of his home and his intention to leave his home to Officer 1. The Council explained that staff would normally advise clients to contact their family and where possible to try to arrange with relatives to take on the responsibilities of a client's finances but they could only do so with the consent of their client. In this case, Mr B had informed Officer 2 that he had informed his family of his intentions. I have been provided with a copy of the note of the meeting between Council Officers and Mr B which confirms this position.

19. The Council have further explained that, given that they had no concerns about Mr B's mental capacity (this was subsequently confirmed by Mr B's solicitor who indicated that he had no reason to doubt Mr B's capacity to instruct a valid Will), it would have been inappropriate and against the Council's procedures to have gone against Mr B's wishes which would have been a breach of client confidentiality. They disagree with Mr C's contention that the family were excluded from discussions and explained that Mr B had the ability to deal with his own affairs. Staff would only intervene if they had any concerns about the individual's

capacity to deal with their own affairs or there was an indication of abuse. In this case, they had no such concerns.

20. The Council explained that, in terms of their guidelines, having been informed of Mr B's intention to buy his council house, with his approval, they approached a solicitor. The solicitor confirmed that no Council Officers attended his meetings with his client, Mr B. A letter from the solicitor confirmed that neither Officer 1 nor Officer 2 were witnesses to the purchase documents and no documents contained in the Will or house purchase files were signed or witnessed by these staff. I have been provided with a copy of the solicitor's letter.

21. The solicitor further confirmed that, during his meeting with Mr B, he assisted Mr B with his application to purchase his council house and advised him that it would be prudent to make a Will.

22. I note Mr C's contention that the Council's policy in relation to the acceptance of gifts was breached in this case. However, the Council have explained that, while their policy covers the acceptance of gifts and hospitality, the property was not a gift but a bequest which was covered by a legal process and a decision by an individual. It would have been open to Mr C or his family to have challenged Mr B's Will through legal proceedings. They did not.

23. Finally with regard to Mr C's allegation that Officer 1 continued to visit Mr B after she was removed as his main carer, the Council have explained that ideally Officer 1 would not have been used for replacement services. However, in this case, while the majority (98%) of Mr B's care was provided by alternative care workers, given the level of service required by Mr B, Officer 1 was used to provide a replacement service when no alternative carer was available.

24. The Council have explained that they aim to provide a caring service and would not want to instruct Officers not to have any contact with clients (many of whom would have been their clients for many years) outwith working hours. I have seen nothing in the Council's policies which indicate that personal care workers should not visit clients in their own time.

(a) *Conclusions*

25. I accept that Mr C believes that, given his late uncle's financial situation, there was no apparent reason for him to purchase his council house. However, I have seen no evidence that the decision was not entirely Mr B's. I am satisfied that Officer 1 followed Council guidelines by notifying her supervisor that Mr B had informed her of his intention to leave his property to her. The Council subsequently took appropriate action in line with the relevant policy. Council Officers met with Mr B to discuss his intentions and to explain the inappropriateness of his proposed action. Mr B was advised that the Council had a duty to protect Officer 1 from any allegations or concerns which could be made at a later date. An incident report was completed which was discussed with the Council's Human Resources and Legal Services. The Council took the decision to remove Officer 1 as Mr B's main carer.

26. I have seen no evidence that the Council's policies and procedures were breached in relation to the making of Mr B's Will, the purchase of his property, or the acceptance of gifts. I do recognise Mr C's concern that Mr B's house was left to Officer 1. Indeed, the Council themselves have stated that it is undesirable for an employee to benefit in such cases. However, I have seen no evidence of fault on the part of the Council in their handling of this matter.

27. I have also taken into account the fact that the Care Commission recently carried out an investigation into the Council's Domiciliary Care Service and had identified no areas of concern in relation to the Council's policies and procedures. In all the circumstances, I do not uphold Mr C's complaint.

**(b) The Council failed to adequately respond to Mr C's representations**

28. Mr C's representative contacted the Council on 25 May 2005 expressing Mr C's concerns about the relationship between Mr B and Officer 1 and the subsequent bequest of property to Officer 1.

29. The Council's Chief Executive wrote to Mr C's representative on 26 July 2005 explaining that a full investigation into the matter had been carried out by the Council's Internal Audit. In addition Mr B's solicitor was contacted. The Chief Executive addressed the issues raised and explained the Council's position. He

subsequently responded to further representations on 19 September 2005 confirming the Council's position.

*(b) Conclusion*

30. I am aware that Mr C does not accept the Council's position on this matter, however, I am satisfied that Mr C's concerns were fully considered and that the Council explained properly their position on each of the issues raised. In the circumstances, I do not uphold the complaint.

**(c) The investigation carried out by the Council into the case was inadequate**

31. The Chief Executive, in responding to Mr C's representative, explained that, given the seriousness of the issues raised, the Council's Internal Audit had been instructed to carry out an investigation into the circumstances surrounding this case. I have considered the briefing note prepared by Internal Audit together with supporting documents and I am satisfied that all the matters raised by Mr C were taken into consideration during the investigation. As part of the investigation, discussions were held with the solicitor involved in the house purchase and the Will preparation, and with the relevant Council Officers. Internal Audit also reviewed the House Purchase and Legal Services files, and Social Work case notes. The investigation also involved discussions with other Councils on the existence of policies/procedures to deal with the issue of bequests. Three of the Councils contacted indicated that they had no procedure/guidance for Wills/Bequests. One Council had the same procedure as the Council while another had a similar procedure.

*(c) Conclusion*

32. I am satisfied that the matter was investigated thoroughly by the Council and although Mr C may remain dissatisfied with the outcome I have seen no evidence of administrative fault or service failure by the Council. For this reason, I do not uphold the complaint.

28 November 2006



**Explanation of abbreviations used**

|             |   |
|-------------|---|
| Mr C        | The complainant                             |
| Mr B        | The late brother of the complainant's uncle |
| Officer 1   | Personal Care Worker                        |
| Officer 2   | Team Leader, Domiciliary Care Service       |
| Officer 3   | Domiciliary Care Manager                    |
| The Council | West Lothian Council                        |

**West Lothian Council's Policies and Guidelines**

Protection of Vulnerable Adults: Interagency Guidelines

Disclosure of Information by Employees (Whistle-blowing)

Code of Conduct for Employees

Personal Information Confidentiality and Security

Confidentiality Guidance Note for Personal Care Workers

Guidelines for Personal Care Workers whose work involves them assisting clients with their financial affairs/and whose work involves them handling money