

Scottish Parliament Region: South of Scotland

Case 200600318: South Ayrshire Council

Summary of Investigation

Category

Local government: social work; care home

Overview

The complainant (Mr C) considered that South Ayrshire Council (the Council)'s Social Work Department were wrongly representing his wife (Mrs C), who lived in a care home, as being mentally capable of determining her own life. He considered that decisions about her life should, instead, be made through consultation with himself or his wife's solicitor.

Specific complaint and conclusion

The complaint which has been investigated is that the Council wrongly represented Mrs C's mental capacity (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations.

Main Investigation Report

Introduction

1. The complainant (Mr C) considered that South Ayrshire Council (the Council)'s Social Work Department were wrongly representing his wife (Mrs C), who lived in a care home, as being mentally capable of determining her own life. He considered that decisions about her life should, instead, be made through consultation with himself or his wife's solicitor. A reminder of the abbreviations in this report is at Annex 1. The Ombudsman received Mr C's complaint on 10 May 2006.

2. The complaint from Mr C which I have investigated is that the Council wrongly represented Mrs C's mental capacity.

Investigation

3. Investigation of this complaint involved obtaining and examining relevant correspondence, procedures and comments provided by the Council and correspondence provided by Mr C. Because of the sensitive nature of the complaint, it also involved discussion of the planning of the investigation with the Ombudsman and other senior colleagues.

4. 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 were given an opportunity to comment on a draft of this report.

Complaint: the Council wrongly represented Mrs C's mental capacity

5. Mrs C is 68 years old and has lived in the care home in question since 2001. In his complaint, Mr C explained that he was concerned that the Council were wrongly representing his wife as being capable of making her own decisions about her life. He felt that this meant he was wrongly excluded from decisions and involvement, such as attendance at her annual review in August 2005. He considered that the Council should consult him, and/or Mrs C's solicitor, rather than Mrs C, when reaching decisions about her life. He also said he believed that his wife was not happy at the care home and that the Council were wrongly representing her as wishing to stay there; and he felt that this was depriving Mrs C of the opportunity to move to another care home.

6. Mrs C had an annual review in August 2005. This was a routine review between herself, care home staff and a social worker/care manager from the

Council's Social Work Department, who conducted the assessment. I shall refer to her as the Social Worker. The Social Worker's report of the review said, amongst other things, that Mrs C very clearly stated she was happy and settled at the home and had no wish to move. The Social Worker said that she continued 'to be clear that [Mrs C] is making an informed choice about her placement as she is more than capable of making decisions about her own needs'. Mrs C was also said in the report to be unsettled and agitated by Mr C's frequent visits. Mr C said that he should have been invited to the review.

7. Over the following months and on various occasions, Mr C expressed concern to the Council about the report. Therefore, the Council decided to arrange a referral for a consultant psychiatrist to assess Mrs C's mental capacity, and in April 2006, they also wrote to Mr C to say that they would arrange a further review, following the August 2005 one. In May 2006, Mr C made his complaint to the Ombudsman.

8. The promised review was conducted in April 2006 by the Social Worker. Amongst other things, her report of the review said that, after long-term difficulties with her wheelchairs, and following consultation with her general practitioner and a hospital physiotherapy department, Mrs C had been fitted for, and had now received, a new wheelchair. The report said that Mrs C was pleased with the greater independence that this would give, although, at the time of the review, she felt cautious about travelling outside her room because of the wheelchair's speed and other differences. The report also said that Mrs C explained her continuing wish to remain at the care home, where she felt happy.

9. The planned psychiatric assessment was conducted in September 2006 by a consultant psychogeriatrician (the Consultant), that is, a consultant in the psychiatry of old age, from the local NHS Health Board. He interviewed Mrs C at the care home in the presence of the Social Worker, with whom he also discussed the case. The Consultant's report said that Mrs C was able to talk clearly about events before she moved to the care home and about her life at the care home, expressing opinions that showed a degree of rational analysis and decision making. He also conducted formal cognitive tests (broadly speaking, cognitive means the capacity for thinking), which showed a poor grasp of time and some difficulty in shifting her attention from one issue to another, taking in new information, concentrating and expressing herself. The Consultant considered that these did have a bearing on Mrs C's judgement and

on her overall ability to make decisions. However, he explained that this was a difficult and subtle matter to judge. He concluded that, on balance, he felt that she appeared to have the capacity to make informed decisions about her welfare, including her place of residence.

10. At the interview with the Consultant, Mrs C explained that, at present, her life seemed rather confined to sitting around. She said, for example, that it was difficult for her to move around much outside her room, and she seemed to feel it would be asking too much to ask staff to take her to other areas of the care home and its garden. The Consultant's report expressed concern about this, and reported that the Social Worker intended, therefore, to raise these issues with the care home. The Consultant also said that it could help Mrs C to make a more informed choice about her living arrangements if she saw other residential homes.

11. The Social Worker updated the Consultant in October 2006, explaining that the care home were trying to resolve Mrs C's mobility difficulties by having given her a manual wheelchair and having sent her electric one to a hospital, where technicians were trying to regulate its speed. The Social Worker indicated that, because of the Consultant's comments, she had asked for an independent social worker to discuss with Mrs C her choice of residence (as Mrs C might feel free to discuss her views frankly with such a person). The Social Worker said that, if Mrs C asked for a move, this would be arranged as soon as there was a suitable vacancy.

12. In reply to my enquiries, the Council gave me some further explanations, which I summarise in paragraphs 12 to 13. Mrs C was given a psychiatric assessment in 2002, the year after she entered the care home. This was at the request of her own solicitor. A different consultant psychogeriatrician conducted that assessment. He reported that Mrs C, who was aged 64 at the time, had some marked communication difficulties but, if given time and shown sensitivity, was able to make her wishes known, give instructions and understand proceedings. The Council told me that, in line with procedures, no further psychiatric assessments were done until 2006 because there was no reason for one. The September 2006 assessment was only arranged because of Mr C's continued representations. (Although she had had a stroke in March 2006, the Council and care home felt Mrs C had recovered well mentally from that, so the stroke itself did not prompt such an assessment.)

13. The Council also told me that, if a request for a move is raised by the user of the service (such as Mrs C) or relative, they will discuss it with the service user. In this case, between mid 2004 and mid 2005, the Social Worker visited Mrs C five times (twice with her manager) specifically because of Mr C's representations about her wanting to leave the care home. The Council said that, each time, Mrs C clearly stated that she did not wish to move and that, each time, the Social Worker was clear that she was capable of making decisions about her own life. The Council also explained that Mr C was not present at the August 2005 review because Mrs C had stated that she did not wish him to be present at her reviews or other meetings concerning her. She was considered to be capable of making this decision. The Council said that, if a service user had such a mental capability, decisions about who should attend were driven by the service user, in consultation with a social worker.

Conclusion

14. In considering this complaint, it was not the function of the Ombudsman's office to take a decision on Mrs C's mental ability: that was a decision for the Council to take. The role of the Ombudsman's office was to consider whether that decision was reached in an appropriate manner. In other words, was there fault in the making of that decision? I have to conclude that I have seen no evidence of any such fault. On the contrary, I would commend the Council for arranging a psychiatric assessment when they did not consider there was any need for one and for arranging another review, despite having done one in August 2005. The Consultant's report of his September 2006 assessment clearly outlined Mrs C's mental abilities and concluded that, although such a decision was not straightforward, his view, on balance, was that she did have the mental capacity to make decisions about her life, including her place of residence. It is to the Council's credit that they also took up the Consultant's concerns about the apparent physical limitations of Mrs C's life (because of the wheelchair issues) and that they decided to give Mrs C a chance of speaking more freely by arranging a discussion for her with an independent social worker about her choice of residence.

15. I am, therefore, satisfied that there is no evidence of fault in the Council's decision making process in considering that Mrs C was mentally capable of determining her own life. It follows, therefore, that I am satisfied that the Council acted appropriately by respecting Mrs C's earlier wish to remain at the care home and her wish to exclude her husband from aspects of her life, such as attendance at her reviews. I have seen a relevant extract from the Scottish

Executive's *National Training Framework for Care Management Practitioner's Guide*, dated March 2006. This includes the statement, '... service user choice of review participants should be part of the discussion in terms of planning the review'. I am, therefore, satisfied with the Council's explanation (see paragraph 13) of the need to respect service users' wishes in respect of review meetings.

16. In all the circumstances, I do not uphold the complaint.

27 March 2007

Explanation of abbreviations used

Mr C	The complainant
Mrs C	Mr C's wife
The Council	South Ayrshire Council
The care home	The care home where Mrs C lives
The Social Worker	The social worker/care manager who was involved in Mrs C's reviews and September 2006 assessment
The Consultant	The consultant psychogeriatrician who conducted Mrs C's assessment in September 2006