

Scottish Parliament Region: North East Scotland

Case 200602684: The Scottish Commission for the Regulation of Care

Summary of Investigation

Category

Scottish Government and Devolved administration: Complaints handling

Overview

The complainants, Mr and Mrs C raised a number of concerns about the way in which the Scottish Commission for the Regulation of Care (the Care Commission) handled their complaint.

Specific complaints and conclusions

The complaints which have been investigated are that the Care Commission:

- (a) incorrectly advised an adoption agency (the Agency) that Mr C was given a formal warning in relation to inappropriate behaviour (*not upheld*);
- (b) failed to confirm that they had not disclosed the information concerned to third parties and that the document(s) involved had been destroyed (*not upheld*);
- (c) went beyond their legislative powers and took unnecessary action (*not upheld*); and
- (d) delayed in investigating their complaint, resulting in significant repercussions for the complainants (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Care Commission ensure that, in relation to child protection issues and where there are concerns, staff are fully aware of the procedures to be followed.

The Care Commission have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 17 November 2006, a solicitor (the Solicitor), on behalf of Mr and Mrs C, submitted a complaint to the Ombudsman. The Solicitor said that his clients had complained to the Scottish Commission for the Regulation of Care (the Care Commission) about the action of a named officer in disclosing information to a third party about Mr C. It was contended that information about an allegation concerning Mr C's behaviour had been passed to an adoption agency (the Agency) when the complainants were seeking to adopt a child. Mr and Mrs C said that, despite their complaints and a subsequent review about the way the matter was handled, they maintained their opinion that the Care Commission had incorrectly told the Agency that Mr C had been given a formal warning about inappropriate behaviour and that, despite their asking, had not provided confirmation that this information had not been passed to others and had been destroyed as they requested. They said that, although it had been established that particular information on Mr C should not have been retained by his employer, the Care Commission, nevertheless, went beyond their powers by disclosing it. Mr and Mrs C further complained that the Care Commission delayed in dealing with their complaint and that this had had significant repercussions for them, in so far as their request to adopt had not been progressed.

2. The complaints from Mr and Mrs C which I have investigated are that the Care Commission:

- (a) incorrectly advised the Agency that Mr C was given a formal warning in relation to inappropriate behaviour;
- (b) failed to confirm that they had not disclosed the information concerned to third parties and that the document(s) involved had been destroyed;
- (c) went beyond their legislative powers and took unnecessary action; and
- (d) delayed in investigating their complaint, resulting in significant repercussions for the complainants.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between the complainants, the Solicitor and the Care Commission. I have also had sight of correspondence between the Agency and the Care Commission; an internal complaint report dated 28 April 2006; and an internal review report dated

14 June 2006. On 16 May 2007 I made a formal written enquiry of the Care Commission and their response to me was dated 13 June 2007.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Care Commission were given an opportunity to comment on a draft of this report.

(a) The Care Commission incorrectly advised the Agency that Mr C was given a formal warning in relation to inappropriate behaviour

5. The background to this complaint is that, in November 2005, the Care Commission was involved in an inspection of the school where Mr C worked. During that inspection a number of child protection issues relating to Mr C, which had been recorded in a memorandum by the school's child protection officer on 14 May 2004 and which had been discussed with him at the time by the head teacher, came to light. The memorandum and the head teacher's subsequent file note concluded that the behaviour concerned, while inappropriate, was naïve. From information available to me it appeared that the child protection agency (the local Council) did not feel that matters were sufficiently serious to share the information with any other agency. In December 2005, the Council's child protection officer visited the school and advised the head teacher that, given the information as presented, Mr C's behaviour should not have been recorded as a child protection concern. At about the same time, the child protection officer also advised the head teacher that their child protection procedures were not sufficiently systematic and were not well managed. It was suggested that the school seek advice from the local authority.

6. In the meantime, the Care Commission's inspection took place (see paragraph 5) and, during the course of conversation, the officer involved became aware of Mr and Mrs C's hopes to adopt a child through the Agency. The officer (on 13 December 2005) discussed matters and her concerns about them with her line manager. She then spoke to the Agency. Two months later, on 6 February 2006, the Agency wrote to the Care Commission's officer saying, 'In order to save any misunderstandings and misinterpretation I would be grateful if you could put in writing all the relevant information that you have concerning this matter'. A reply was sent by the Care Commission's officer on 16 February 2006, outlining the incidents which had been noted in the memorandum but identifying the position with regard to the school's child

protection record-keeping (see paragraph 5). However, she also wrote that, 'I was not confident that the matter had been properly investigated so as to conclude there was no risk' and that she had discussed the situation with her line manager before contacting the Agency.

7. Mr and Mrs C became aware of the correspondence between the Care Commission and the Agency shortly afterwards and on 28 February 2006 made a formal complaint to the Care Commission. Their complaint was not upheld and, despite a formal review in June 2006 (which changed one finding from upheld to partially upheld), they remained dissatisfied with the standard of investigation and the information provided and, on 17 November 2006, the Solicitor made their complaint to the Ombudsman.

8. I have now seen all the relevant correspondence (see paragraph 3) and I can confirm that at no time was it indicated to the Agency that Mr C had been given a formal warning in relation to inappropriate behaviour. However, it does appear from the review report that the information which was passed to the Agency should not have been, notwithstanding that it had been done in 'good faith'. The reviewer indicated that if there had been serious concerns he would have expected that they would have been passed to the local authority only and then in a timely manner (at the earliest opportunity, ie, around the time of the school inspection in November 2005). He concluded that there had been a breach of confidentiality and offered an apology for this and for any distress which may have been caused.

(a) Conclusion

9. This has been a difficult case to determine but I am satisfied that the Care Commission did not advise the Agency that Mr C had been given a formal warning in relation to his behaviour and, therefore, I do not uphold this complaint. However, it is clear that the Care Commission officer concerned failed to act appropriately and that she breached Mr C's confidentiality.

(a) Recommendation

10. In connection with the above, the Ombudsman recommends that the Care Commission ensure that, in relation to child protection issues and where there are concerns, staff are fully aware of the procedures to be followed.

(b) The Care Commission failed to confirm that they had not disclosed the information concerned to third parties and that the document(s) involved had been destroyed

11. Mr and Mrs C sought assurances that the Care Commission had not disclosed the information concerned to others and that, indeed, the information had been destroyed. They did not feel that the Care Commission had satisfactorily replied to this aspect of their complaint although the letter sent to the Solicitor, dated 3 July 2006, on completion of the Care Commission's review of their case, stated that there was only one copy of the memorandum held by them and that it would be destroyed. The Care Commission confirmed that the memorandum had not been passed to any other organisation. However, the letter went on to say that 'It is not for the Care Commission to direct any other agency to destroy this document as it is a matter of record'. Referring to the letter of 16 February 2006 sent to the Agency, the Care Commission said that this had not been copied to any other organisation and, as the letter was a matter of record, it would be held confidentially by the Care Commission (that is, it would not be destroyed).

(b) Conclusion

12. Mr and Mrs C appeared to have been confused by the information passed to the Solicitor on 3 July 2006, that the Care Commission had only one copy of the memorandum and that it would be destroyed. However, there was an oblique reference to other copies over which they had no control (presumably held by the child protection agency and that held in the school's child protection file, see paragraph 5). While Mr and Mrs C may have wished these to be destroyed also, this was not the Care Commission's responsibility and they could not direct any other organisation to take this action. Similarly, once the letter of 16 February 2006 had been sent, it became a matter of fact and record and the Care Commission confirmed it would not be destroyed. Nevertheless, whilst recognising Mr and Mrs C's concerns, a clear undertaking had been given to hold this document (the letter of 16 February 2006) confidentially and, in all the circumstances, I do not uphold this aspect of the complaint.

(c) The Care Commission went beyond their legislative powers and took unnecessary action

13. As discussed above (see paragraphs 8 and 9), it is clear that the Care Commission breached Mr C's confidentiality by approaching the Agency. If they had concerns, the Care Commission should have brought the matter to the local authority's attention. This aspect of the matter had already been dealt with by

the Care Commission's review and an apology had been made before a complaint was made to the Ombudsman. Therefore, while I understand the reasons why Mr and Mrs C feel aggrieved, in all the circumstances (as this complaint had already been addressed and remedied) I do not uphold this part of the complaint.

(d) The Care Commission delayed in investigating their complaint, resulting in significant repercussions for the complainants

14. Mr and Mrs C made their complaint to the Care Commission on 28 February 2006 and a meeting was arranged between them and the investigating officer on 16 March 2006. Letters were sent to the complainants on 14 April and 4 May 2006 notifying them of a likely delay and explaining the reasons for this. On both occasions apologies were offered. Mr and Mrs C were advised of the outcome on 16 May 2006. As they remained unhappy, Mr and Mrs C sought a review and gave the Care Commission notice on 24 May 2006. A review report was completed on 14 June 2006 and a letter formulating the information in the review report was passed to the complainants on 3 July 2006.

(d) Conclusion

15. While I can readily understand the reasons why Mr and Mrs C were anxious to have this matter concluded speedily, the Care Commission kept them fully apprised of the reasons why there was a delay and they apologised. I acknowledge that the timescales involved may have been longer than those outlined in the Care Commission's complaints procedures but, as those procedures point out, that is not always possible and I do not conclude that there was undue delay in handling this matter. Thereafter, I do not consider that the Care Commission could be held responsible for any injustice which Mr and Mrs C felt accrued from this delay. In all the circumstances, I do not uphold this part of the complaint.

16. The Care Commission have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Care Commission notify her when the recommendations have been implemented.

19 September 2007

Explanation of abbreviations used

The Solicitor	The solicitor who submitted the complaint on behalf of the complainants
Mr and Mrs C	The complainants
The Care Commission	The Scottish Commission for the Regulation of Care
The Agency	The adoption agency