

## Scottish Parliament Region: Central Scotland

### Case 200601455: The Scottish Commission for the Regulation of Care

#### Summary of Investigation

##### **Category**

Scottish Government and Devolved Administration: Care Commission; policy and procedures

##### **Overview**

Mrs C complained to The Scottish Commission for the Regulation of Care (the Care Commission) about child care services she had received during her daughter's stay at a nursery (the Nursery). The Care Commission carried out an investigation and a follow-up inspection programme, as a result of her complaint, which Mrs C has considered was inadequate.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Care Commission failed to ensure that a recommendation and requirements from the investigation and inspection reports were implemented by the Nursery (*not upheld*); and
- (b) the Care Commission failed to address the issues raised by Mrs C in her letter of 13 August 2006 (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. Mrs C registered her daughter, Baby A, with a nursery (the Nursery) in April 2006. Baby A was removed after six weeks, following a number of incidents which Mrs C found unacceptable. Mrs C complained to The Scottish Commission for the Regulation of Care (the Care Commission) about the level of care and a range of services within the Nursery, which the Care Commission investigated. Mrs C was unhappy with the investigation and follow-up of her complaints about the Nursery and brought her complaint to the Ombudsman in August 2006.

2. The complaints that have been investigated are that:

- (a) the Care Commission failed to ensure that a recommendation and requirements from the investigation and inspection reports were implemented by the Nursery; and
- (b) the Care Commission failed to address the issues raised by Mrs C in her letter of 13 August 2006.

### **Investigation**

3. Mrs C complained to the Nursery after Baby A was found to have sustained an injury of two marks on her abdomen after a day spent in the care of the Nursery on 26 July 2006. She then escalated matters by referring it to the Care Commission on 28 July 2006. Mrs C complained to the Ombudsman on 21 August 2006. She alleged that the Care Commission had not investigated her complaint about the Nursery thoroughly nor taken appropriate action to resolve matters. As part of this investigation, I have made enquiries to the Care Commission to establish details regarding their investigations and the subsequent outcome and I have spoken to Mrs C on a number of occasions. I have also obtained the details of correspondence and communication between the Care Commission and the Nursery and have seen a copy of the Care Commission's complaint file. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Care Commission were given an opportunity to comment on a draft of this report.

4. It is not the purpose of this report to consider the events that took place in the Nursery, which gave rise to the complaint against them. This investigation has been undertaken to establish the actions of the Care Commission after

receiving Mrs C's complaint. The events that took place at the Nursery have been explained in paragraphs 6 to 7 below, in order to provide some context to this report.

5. I wrote to the Care Commission on 13 July 2007 and asked for clarification regarding the status of the Nursery. It was explained in their response of 27 July 2007 that the Nursery was deregistered in February 2007. The Nursery closed in the same month.

6. The issue that gave rise to Mrs C's complaint about the Nursery was that, on 26 July 2006, Mrs C collected her daughter from the Nursery around 17:00. When Baby A was being bathed that evening, her father saw two red marks on his daughter's abdomen. Further examination of the marks led the family to attend their local hospital's Accident and Emergency Unit for examination and to ensure that Baby A had sustained no other injuries. Additionally, Mrs C was very concerned that her daughter was dehydrated, a concern that was also raised as part of the complaint made to the Nursery and, subsequently, to the Care Commission. The second issue was explored at hospital and staff did not find Baby A to be dehydrated.

7. Mrs C contacted the Nursery the following morning and was informed that her daughter had been out on an outing on Wednesday 26 July 2006, with a number of other children and with designated Nursery staff. The outing and the issue of Baby A's injuries led Mrs C to complain to the Nursery and then to the Care Commission. Investigation undertaken by the Care Commission identified that there were a number of deficiencies in the preparation for the outing and the conduct during the outing by the staff. It was identified the marks sustained by Baby A had been caused by the straps in the buggy resting next to her skin for too long. It was concluded that the baby had not been taken out of the buggy during the trip, which was confirmed by the staff concerned. This led on to other matters being investigated by the Care Commission (for example, Nursery conduct, health and safety issues and staff conduct), which resulted in the Nursery instigating disciplinary proceedings and a review of procedures. Additionally, a number of immediate requirements and a recommendation were issued by the Care Commission to the Nursery to improve a range of key areas of service which were below acceptable standards.

8. I have held a number of telephone conversations with Mrs C to establish the terms of this investigation and to clarify the role of the Ombudsman. Mrs C

found many aspects of the service at the Nursery unsatisfactory. These were matters she felt the Care Commission should have considered as part of their investigation into her complaint and as part of the improvements that were required by the Nursery. One key aspect of Mrs C's unhappiness was the length of time it took for the Care Commission to conduct their investigation, which has been outlined within this report (see paragraphs 10 to 15).

**(a) The Care Commission failed to ensure that a recommendation and requirements from the investigation and inspection reports were implemented by the Nursery**

9. Mrs C first complained to the Nursery on 27 July 2006 and her complaint was escalated to the Care Commission and acknowledged on 2 August 2006. Mrs C was unhappy with the outcomes of the investigation by the Care Commission and the way they had conducted their investigation. She wanted more details about the incident involving her daughter and wanted action taken against the staff in whose care her daughter had been left for a number of hours during an outing. Mrs C also wanted to have the investigation carried out by an independent officer of the Care Commission rather than a person who had previously visited the Nursery. Mrs C was concerned that the Care Commission had not followed up on its own four requirements and the recommendation made (and reinforced) during their unannounced inspection. She was unhappy that information was not in place to show parents what the outcome of the Care Commission's involvement in her case had been.

10. In line with their procedure, Care Commission visits to the Nursery regarding their investigation into the complaint took place on 31 July 2006, 1 August 2006, 28 August 2006 and also 9 October 2006, which was an unannounced inspection of the Nursery. As a consequence, the Care Commission sought to make a number of significant requirements and a recommendation within the Nursery. The individual carrying out the investigation into the complaint and undertaking the inspections was the officer in the Care Commission responsible for the Nursery. This was in line with the Care Commission's procedures and I have seen no reason to comment on their choice of officer.

11. The Care Commission considered whether there were grounds to report the staff under the Protection of Children (Scotland) Act 2003 in line with the Regulation of Care (Scotland) Act (2001). They concluded this was not required in the circumstances. In a meeting with the owner of the Nursery on

22 August 2006, which had been arranged with the Nursery on 21 August 2006 by telephone, the Care Commission indicated it was not their responsibility to instigate any disciplinary procedures but pointed out that this was a legal requirement imposed upon the Nursery under the Protection of Children (Scotland) Act 2003, with the level of disciplinary action taken being determined by the employing body, in this case, the Nursery.

12. As part of their investigation into Mrs C's complaint, the Care Commission worked with the Nursery to identify what improvements were required by issuing four requirements and a recommendation for improvement, initially in their report of the complaint on 8 August 2006 to Mrs C and then to the Nursery on 9 August 2006. They also established other areas of practice which needed to be brought up to standard. Following documented meetings and communications between the Nursery and the Care Commission, a further detailed report was produced after the unannounced Care Commission visit to the Nursery for a day on 9 October 2006. A response to this report was provided by the Nursery to the Care Commission detailing an Action Plan, signed by the manager on 27 November 2006. On 10 January 2007, a further meeting was held at the Nursery to identify the actions being undertaken to improve the standards within it. At this meeting, a discussion was held regarding potential closure of the Nursery. The Care Commission informed the owner that their inspections still had to continue, regardless. It was also clarified for the Nursery by the Care Commission that, even though they had intimated closure, the Care Commission were still obliged to follow through on their requirements and recommendation. The Care Commission have advised me that further communication between them and the Nursery continued beyond the date of closure.

13. The Care Commission have authority to issue an Enforcement Order, in line with their current procedures, to ensure that essential maintenance and repairs to the property are carried out and that required standards are met. The Care Commission have pointed out that, whilst the Enforcement Policy was not published until October 2006, the practice detailed within the policy was already in place at the time the complaint was raised by Mrs C.

14. In accordance with the Care Commission's Enforcement Policy (valid from October 2006, section three, headed, 'Stepped Approach to Enforcement'), the Care Commission issued an Improvement Notice under Section 10 Regulation

of Care (Scotland) Act 2001. This was intimated in their correspondence to the Nursery dated 29 January 2007.

*(a) Conclusion*

15. The Care Commission carried out an inspection and a number of visits both announced and unannounced, and they also liaised with the Nursery throughout the period from July 2006 to January 2007 and thereafter, beyond the closure date of the Nursery. They attempted to progress the identified requirements and recommendation in order to improve the standards in the Nursery. The complaints made by Mrs C were incorporated into the reports prepared for the Nursery. In view of the record of activity I have seen (see paragraphs 9 to 12), I do not uphold this aspect of Mrs C's complaint.

**(b) The Care Commission failed to address the issues raised by Mrs C in her letter of 13 August 2006**

16. The Care Commission conducted an investigation into Mrs C's complaint sent to them on 2 August 2006 and responded to her concerns on 8 August 2006. Mrs C replied to that response on 13 August 2006, indicating her further unhappiness with matters relating to the Nursery and the investigation undertaken. In her view, the Care Commission had not answered the matters raised. In this letter to the Care Commission she also raised further concerns which she felt had not been addressed. In particular, Mrs C identified a lack of detail relating to the outing in which her daughter had participated on 26 July 2006 and was unhappy that the staff involved in the incident had not been named. Mrs C said that no information had been given about the care issues that she had identified nor any detail about the action being taken as a consequence. Additionally, Mrs C indicated that in her view, more should have been done to implement the recommendation and requirements that had been identified in the Care Commission's report.

17. The Care Commission's Complaints Officer responded to Mrs C on 17 August 2006. The Regional Manager also wrote to her on 31 August 2006 and then met with Mrs C on 15 September 2006, to discuss her complaint. He took this opportunity to talk to Mrs C about her request for information about any disciplinary action and about the names of those individual members of staff involved.

18. In both the letters and the meeting referred to above (see paragraph 17), the Care Commission confirmed to Mrs C that her complaint had been fully

upheld. They advised her of the actions they were taking as a result. Mrs C was told she would be kept advised about the results of any further inspections. They also clarified that 'requirements' were issued when there was a direct breach of the terms of the Regulation of Care (Scotland) Act 2001 or associated regulations. 'Recommendations' were made when there was a departure from the National Care Standards or recognised good practice. Their response also contained details of the outing which led to the complaint, although the Regional Manager explained that their report, issued on 8 August 2006, would not disclose who had been involved, given the Care Commission's responsibility for confidentiality in line with the Data Protection Act (1998).

*(b) Conclusion*

19. I have seen the summary of the outing that was given in the report issued on 8 August 2006 and I appreciate the limitations placed upon the Care Commission in terms of the Data Protection Act (1998). This was explained to Mrs C. I have also seen evidence of the follow-up of the complaint and subsequent actions taken by the Care Commission to work alongside the Nursery to improve standards. In all the circumstances, I do not uphold this aspect of the complaint.

*(b) Recommendation*

20. The Ombudsman has no recommendations to make.

**Explanation of abbreviations used**

Mrs C	The complainant
Baby A	Daughter of complainant
The Care Commission	The Scottish Commission for the Regulation of Care



**List of legislation and policies considered**

The Commission's enforcement policy, updated and valid from October 2006, section three, headed, 'Stepped Approach to Enforcement'