

Scottish Parliament Region: South of Scotland

Case 200602079: Scottish Borders Council

Summary of Investigation

Category

Local government: Complaints handling

Overview

Mr C's complaint resulted from the concern he raised that his elderly mother-in-law (Mrs A) had been incorrectly charged for Homecare Services for the preparation of meals by Scottish Borders Council (the Council). Mr C's concern was acknowledged by the Council and there was an exchange of correspondence and emails between them, however, Mr C alleged that the Council inadequately dealt with his concern and, thereafter, his complaint.

Specific complaint and conclusion

The complaint which has been investigated is that the Council demonstrated poor complaints handling by not adequately responding to the complaint Mr C made, regarding their Homecare Charges (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that all emails (and all manner of contact) are responded to, and responded to in good time, and that the Council adhere to their complaints handling procedure in this regard;
- (ii) seek to improve communication between Council departments when handling complaints and enquiries, such as in this case that involved the Social Work Department and Legal Services Department. This should include considering at what point the Customer Care Manager should be involved to co-ordinate and lead procedures. In addition, when a complaint or enquiry (formal or informal) is passed to another Council department for further action, the reason for this is explained to the complainant; and
- (iii) offer an apology to Mr C for the inadequate manner his complaint was dealt with.

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

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from Mr C, who stated that the Scottish Borders Council (the Council) had inadequately addressed the formal complaint he had made, regarding the charges they levied against his elderly mother-in-law (Mrs A) for the help she received with the preparation of her meals. Mrs A had received this assistance after an assessment of need, supported by specialist health advice, had been completed. This followed Mrs A's hospitalisation after she had broken her hip. Thereafter, Mrs A had been supported in her home by the Council's Social Work Department, prior to her admission into Residential Care. Mr C alleged that, although he contacted the Council on several occasions to express his concerns about the Homecare charges, the Council had taken little action regarding his complaint and he received no advice or guidance from the Council about how to progress his complaint.

2. The complaint from Mr C which I have investigated is that the Council demonstrated poor complaints handling by not adequately responding to the complaint Mr C made, regarding their Homecare Charges.

3. Mr C also complained to the Ombudsman that the Council had wrongly charged Mrs A for Homecare Services (the Service) and had acted contrary to the Disability Discrimination Act. The Council's position was that they had applied these charges in line with legislation. Mr C understands that this aspect of his complaint has not been investigated, as the Ombudsman is unable to adjudicate on the interpretation of legislation.

Investigation

4. The Investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. This included a timeline of the correspondence between Mr C and the Council between 6 July 2006 and 4 October 2006, according to Council records (see Annex 2). I considered the Council's complaints handling procedure and also the Social Work Service complaint procedure, which has a separate process. I also made a number of written enquiries of the Council.

5. 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.

Background

6. According to the Council's Social Work Complaints Procedure (the Complaints Procedure) it states 'a Manager will be nominated to investigate your complaint. When the investigation is complete we will contact you with our formal response. Informal complaints are dealt with by the Manager of the service in question'. The Council also outlines that they have a duty to acknowledge a formal complaint within five days of receiving it and to respond fully within twenty-eight days, unless an agreement for an extension is reached with a complainant (see paragraph 4).

7. The Council's Corporate Complaint Procedure (the Corporate Complaints Procedure) incorporates five definitions of complaints including 'dissatisfaction with the way the Council policies are being applied or administered' and 'delays in responding to customer enquiries or requests'. I have outlined the three remaining definitions in Annex 2.

Complaint: The Council demonstrated poor complaints handling by not adequately responding to the complaint Mr C made, regarding their Homecare Charges

8. Mr C complained to the Ombudsman during October 2006 that the Council had charged Mrs A for the Service, prior to her admission to a Residential Care Home. Mr C stated he had complained to the Council about this and was dissatisfied with the way they dealt with the matter.

9. On 24 October 2006 I telephoned the Council's Customer Care Manager (Officer 1), who told me that he had no record of a complaint being received from Mr C.

10. On 24 October 2006 I wrote to Mr C and the Chief Executive of the Council. I detailed the substance of Mr C's complaint and summarised the discussion I had with Officer 1 that reflected what Officer 1 had told me (see paragraph 1 and paragraph 9).

11. The next day, following receipt of my letter, Mr C telephoned and told me that he disputed the contents of my letter, in so far as he had mentioned that he

had formally complained to the Council. He said that the Council had misled me. He said he would send me copy emails and letters to prove this (see paragraphs 8 to 10).

12. On 26 October 2006 I received from Mr C five copy emails he had sent to the Head of Legal Services (Officer 2) dated 5 September 2006, 10 September 2006, 28 September 2006, and two dated 4 October 2006 (timed at 09:10 and 11:46). The key issue Mr C raised in his email of 10 September 2006 was his stated view that '[Mrs A's] food preparation should be classified as personal care and should not have been charged for. We would therefore ask that [Mrs A] be refunded at the earliest opportunity'. Mr C also sent me two email responses he received from Officer 2 dated 8 September 2006 (to his email of 5 September 2006) and 4 October 2006 (timed at 10:27). I have seen from these email exchanges that Mr C's emails of 10 September 2006, 28 September 2006 and 4 October 2006 (at 11:46) were not responded to. The substance of the two emailed responses which Mr C received from Officer 2 advised how the Council interpreted and implemented the policy of the Scottish Executive regarding personal care (see paragraph 3). Furthermore, Officer 2 stated that it was the Council's obligation to provide personal care as they assessed it to be necessary. These two responses mirrored the views taken by Officer 3 and Officer 4 of Social Services (see paragraphs 13 and 14).

13. Mr C also provided me with an earlier letter he received from the Team Leader of Social Services (Officer 3) dated 17 July 2006. This was in reply to his letter to Officer 3 dated 6 July 2006, in which Mr C had initially raised his concern. I observed that Officer 3 responded to these concerns regarding charging Mrs A for meal preparation and stated 'the interpretation of the guidance which you refer to in your letter has led to some confusion' (see paragraph 1).

14. In addition, Mr C provided me with a letter dated 30 August 2006 received from Officer 2, in response to a letter dated 9 August 2006 addressed to the Director of Social Work (Officer 4). This restated his concerns outlined in his letter of 6 July 2006. Mr C opined that the Council may not have complied with legislation, as Mrs A had been charged for assistance with the preparation of food. I have seen this letter and noted that Mr C also stated that 'The Executive have now advised that I write directly to you before writing to the Local Authority Ombudsman (sic)'. According to Officer 2 in his reply to Mr C, charges had

been made appropriately to Mrs A, on the basis that a meal had been prepared for her (see paragraph 13). However, Mr C continued to complain to the Council regarding his view that Council policies were being incorrectly applied and administered (see paragraph 7).

15. In my review of this paperwork, it is evident that up to the letter of 17 July 2006 from Officer 3, Mr C understood his complaint was being addressed by the Social Work Department, who were the recipients and authors of his correspondence up to that time. Mr C had replied to the letter dated 17 July 2006 from the Social Work Department on 9 August 2006 and had addressed it to Officer 4 (see paragraph 13). It was only when Mr C received a letter dated 30 August 2006 from Officer 2 and noted the opening sentence, 'I have been asked to reply to your letter of 9 August addressed to [Officer 4]', that he became aware his complaint had been passed to the Council's Legal Services (the Legal Department) to be dealt with (see paragraph 14). There was no explanation provided to Mr C as to the reason why his concerns were passed to the Legal Department.

16. Thereafter, during September and October 2006 (see paragraph 12), Mr C continued to question the administration and application of the Council's policy in relation to the Disability Discrimination Act and Mrs A's needs, regarding their charges for food preparation. In Mr C's view, the lack of acknowledgements and responses to these emails and the lack of timely responses, combined with the inadequate reply he received from Officer 2 on 4 October 2006 in response to his earlier email of that day, led him to feel that his complaint had not been adequately addressed (see paragraphs 1 and 9). He complained to the Ombudsman. A timeline of the correspondence referred to in this paragraph is included at Annex 2.

17. Throughout the period of Mr C's contacts with the Council, Mr C was not offered assistance or guidance regarding how to make a formal complaint; although in both Mr C's emails dated 4 October 2006 (before and after receiving Officer 2's email of the same date), he had expressed his dissatisfaction with Officer 2's responses and stated that he would contact the 'Local Authority Ombudsman' (sic) (see paragraph 11 and 12).

18. When replying to my enquiries on 10 April 2007, Officer 4 said that Mr C had raised a query, not a formal complaint, with the Council despite my letter to him dated 24 October 2006 (see paragraph 10). In addition, Officer 4 stated his

view that the Council believed they had answered Mr C's queries within their emails and letters.

19. On 19 September 2007, the Chief Executive replied to my further enquiry and said that Mr C first wrote to the Social Work Department requesting a review of the Service charges and thereafter to the Legal Department making the same request. The Chief Executive also stated 'it was the understanding of Social Work that [Mr C] accepted that his query had been dealt with, albeit not with the outcome that he desired'.

20. In addition, the Chief Executive noted that in my correspondence with Mr C, I had enclosed details of the Council's complaints procedure (see paragraph 6, paragraph 7 and paragraph 10). However, he advised that the Council had received no subsequent complaints correspondence from Mr C and, according to the Council, it was up to Mr C whether or not he wished to initiate the Council's complaints procedure.

Conclusion

21. I have read very carefully all the documentation supplied to me, including correspondence between Mr C, the Social Work Department and the Legal Department (see paragraph 4). I have also taken into account the length of time that Mr C corresponded with the Council and that Mr C's complaint was passed from the Social Work Department to the Legal Department with no explanation provided to Mr C for doing so (see paragraphs 13 to 15 and 19).

22. In my view, in particular from Mr C's email exchanges with Officer 2, Mr C sought clarity about the issues he had raised and complained about. It is also clear from these exchanges that neither the Legal Department nor Officer 2 acknowledged or responded to Mr C's emails dated 10 and 28 September 2006 until after Mr C's email at 09:10 on 4 October 2006 was sent (see paragraph 16, paragraph 17 and Annex 2). I acknowledge that the substance of Officer 2's response email at 09:20 on 4 October 2006 addressed the concerns Mr C initially raised over the disputed Homecare charges, however, it is also clear that Mr C's correspondence with the Council from 6 July 2006 up to 4 October 2006 was more than a query, that Mr C was very concerned and had tried in good faith to complain (see paragraphs 12, 13 and 14). Both Mr C's emails dated 4 October 2006 sent to Officer 2, in my view, afforded the Council not only an opportunity to respond to Mr C to include advice and guidance about his concerns but, crucially, to outline (if, as the Council had opined, Mr C

had not completed their complaints process) the stage his complaint had reached with them and/or to guide him through that process (see paragraph 12). The Council did not do so and this was a missed opportunity. Furthermore, the Corporate Complaints Procedure, amongst other things, defined a complaint as dissatisfaction with the way Council policies are being applied or administered (see paragraph 7). Mr C's correspondence and emails to the Council from 6 July 2006 up to 4 October 2006 clearly demonstrated his dissatisfaction with what he understood were Council policies (see paragraphs 12 to 17 and Annex 2).

23. In addition, Officer 2 had not corrected Mr C when he stated in his earlier letter to him of 9 August 2006 that he would contact the 'Local Authority Ombudsman' (sic), which ceased to operate during October 2002 (see paragraphs 14 and 17). Neither did Officer 2 address this same erroneous reference made by Mr C in both of his emails to him dated 4 October 2006. If, as the Council stated, Mr C had not formally complained and/or had not completed their complaints process, these statements should not have been left unchallenged by the Council. These statements clearly demonstrated that Mr C had not been enquiring for more than three months, but had been trying to make a complaint. Therefore, Mr C should not have been left without guidance about how to progress his complaint against the Council. I can understand why Mr C believed, in good faith, that the Council could do no more for him regarding his complaint and why he understood (in the absence of information to the contrary) that his complaint was at the stage it could be brought to the Ombudsman. Taking all these factors into account, I consider that the Council's actions (or inactions) in this matter amount to maladministration and I uphold the complaint.

Recommendations

24. The Ombudsman recommends that the Council:

- (i) ensure that emails (and all manner of contact) are responded to, and responded to in good time, and that the Council adhere to their complaints handling procedure in this regard;
- (ii) seek to improve communication between Council departments when handling complaints and enquiries, such as in this case that involved the Social Work Department and Legal Services Department. This should include considering at what point the Customer Care Manager should be involved to co-ordinate and lead procedures. In addition, when a complaint or enquiry (formal or informal) is transferred between Council

departments for further action, the reason for this is explained to the complainant; and

- (iii) offer an apology to Mr C for the inadequate manner his complaint was dealt with.

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

Explanation of abbreviations used

Mr C	The complainant
The Council	The Scottish Borders Council
Mrs A	Mr C's mother-in-law, who was charged for the Service
The Service	Homecare Services for the preparation of meals
The Complaints Procedure	The Council's Social Work Service Complaint Procedure
The Corporate Complaints Procedure	The Council's Corporate Complaints Procedure
Officer 1	Customer Care Manager
Officer 2	Head of Legal Services
Officer 3	Team Leader of Social Services
Officer 4	Director Social Work
The Legal Department	Legal Services Department

The Remaining Three Council Corporate Complaint Definitions

(see paragraph 7)

- Failure to provide the standard or quality of service promised by the Council
- The treatment by, or unhelpful attitude of, member of staff
- Unlawful or unfair discrimination

List of correspondence

(see paragraph 17)

5 Sept 2006	emails from Mr C to Officer 2 of the Legal Department
10 Sept 2006	
28 Sept 2006	emails from Mr C to Officer 2 of the Legal Department
4 Oct 2006 at 09:10	email from Mr C to Officer 2 the Legal Department
4 Oct 2006 at 10:27	email from Officer 2 of the Legal Department to Mr C
4 Oct 2006 at 11:46	email from Mr C to Officer 2 the Legal Department

(see paragraph 20)

6 July 2006	Mr C wrote to the Social Work Office questioning charging for meals
17 July 2006	Reply from Officer 3 stating that the preparing of meals was chargeable
9 Aug 2008	Mr C wrote to Social Work Office, following advice from the Scottish Executive
30 Aug 2006	Officer 2 wrote to Mr C explaining that the Council operated within the law

31 Aug 2006	Mr C responded to Officer 2 by email expressing his ongoing concerns
5 Sept 2006	Mr C emailed Officer 2 questioning Council policy
8 Sept 2006	Officer 2 responded
10 Sept 2006	Mr C questioned Council response with Officer 2
28 Sept 2006	Mr C emailed that he had not received a response to his email dated 9 Sept 2006
4 Oct 2006	Further email from Mr C stated that if he did not receive a response he would formally complain to the Local Authority Ombudsman
4 Oct 2006	Officer 2 responded that the Service was chargeable
4 Oct 2006	Mr C responded and stated that he intended to lodge a formal complaint with the Local Authority Ombudsman
25 Oct 2006	Letter received from Ombudsman which stated that she would not be pursuing complaint. A letter to Mr C was enclosed which advised him to raise a complaint with Social Work (see paragraph 8)

List of legislation and policies considered

Scottish Borders Council Complaints Procedure

Scottish Borders Council Social Work Complaints Procedure