

## Scottish Parliament Region: North East Scotland

### Case 200602043: The Scottish Commission for the Regulation of Care

#### Summary of Investigation

##### **Category**

Scottish Government and Devolved Administration: The Scottish Commission for the Regulation of Care; Complaints handling and staff attitude

##### **Overview**

The complainant (Mrs C) raised concerns about the attitude of an officer (Officer 1) of the Scottish Commission for the Regulation of Care (the Care Commission) during an inspection of her nursery (the Nursery) and about the way in which her complaint to the Care Commission had been investigated.

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

The complaints which have been investigated are that:

- (a) Officer 1 spoke to the Nursery staff in an unprofessional way during the inspection (*upheld*);
- (b) the Care Commission did not carry out an adequate investigation of Mrs C's complaint:
  - (i) Mrs C's complaint was not initially identified as a complaint (not upheld);
  - (ii) the Care Commission did not take into account similar concerns which had been raised about Officer 1 when investigating Mrs C's complaint (partially upheld to the extent that Mrs C was not given an appropriate explanation for why these concerns were not taken into account);
  - (iii) the Care Commission did not ask the correct questions of staff who were interviewed (not upheld); and
  - (iv) Mrs C's complaint was not passed to the Care Commission Review Committee in accordance with their complaints process (upheld).

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

The Ombudsman recommends that the Care Commission:

- (i) take steps to ensure that all evidence provided by complainants is appropriately considered and that explanations are provided, where appropriate, for why particular evidence cannot be relied upon;

- (ii) remind relevant staff that the internal complaints procedure should be exhausted before referring a complainant to the Ombudsman; and
- (iii) apologise to Mrs C for the failings identified in this report.

## **Main Investigation Report**

### **Introduction**

1. On 1 March 2006, the Scottish Commission for the Regulation of Care (the Care Commission) carried out an inspection of the complainant (Mrs C)'s nursery (the Nursery). On 3 March 2006, Mrs C complained to the Care Commission that she considered the conduct of one of the Care Commission officers (Officer 1), who had carried out the inspection, to have been inappropriate. She explained that a number of her staff felt that Officer 1 had adopted a condescending manner when she spoke to them and also that she had been trying to catch them out in the way she asked questions.

2. On 17 March 2006, Officer 1's Team Leader (Officer 2) responded to Mrs C's complaint. He explained that he had interviewed Officer 1 as well as the other officer who had carried out the inspection of the Nursery (Officer 3). He stated that Officer 3 viewed Officer 1's contribution and assessment during the inspection as professional and proportionate at all times. He also stated that, over the past three years, no other provider had raised any concerns over Officer 1's practice or manner at inspection. Officer 2 explained that Officer 1 had not been trying to catch staff out during the inspection but that it was part of her job to corroborate the information provided by staff. Officer 2 stated that Mrs C's concerns had highlighted a number of issues which he would act on. Firstly, that the Care Commission should be more sensitive to the feelings of staff at a regulated service and that this may require more preparation prior to the inspection. Secondly, that there may be the need for some training with the Nursery staff on the Care Commission's inspection methodology and role. He also stated that he would keep the issues raised about Officer 1 under review as part of the Care Commission's regular supervision process. Officer 2 concluded by explaining that Mrs C could pursue a formal complaint which would be investigated independently of the line management structure.

3. On 22 March 2006, Mrs C wrote to the Regional Manager of the Care Commission and requested that her complaint be investigated. The Comments and Complaints Co-ordinator (Officer 4) wrote on 4 May 2006 to confirm that Mrs C's concerns would be dealt with as a formal complaint.

4. During the investigation of the complaint, Mrs C provided statements taken from the Nursery staff who confirmed that they had perceived Officer 1's conduct as abrupt. They commented that it was not the content of her

questions but her tone and manner that they found unacceptable. Officer 1 stated that she was professional in her manner throughout the inspection. During the investigation, the Care Commission spoke briefly to seven Nursery staff and concluded that these staff had no concerns of their own in relation to Officer 1 or her conduct. Five members of Nursery staff were interviewed in more detail and explained their concerns with Officer 1's conduct. The investigation accepted that some staff perceived Officer 1's tone as abrupt, but did not find any evidence that it was abrupt and, therefore, the allegation could not be upheld. The officer who investigated the complaint was satisfied that there was no evidence that Officer 1 used inappropriate or unprofessional language when asking members of staff questions. The investigation concluded that, whilst it was accepted that some of the Nursery staff found Officer 1's conduct to be inappropriate, the investigation had not found any evidence that her actions or behaviour were unprofessional in the course of the inspection and, therefore, the complaint was not upheld.

5. On 17 July 2006, Mrs C wrote to the Care Commission to ask for a review of the decision on her complaint. She complained that the main part of her complaint had not actually been investigated and that the investigation had focussed on ancillary concerns raised by her. She also complained that she and her staff should have been interviewed during the original complaint investigation.

6. On 9 August 2006, Mrs C wrote to the investigating officer. She raised concerns about the fact that Officer 2 had stated that no concerns about Officer 1's practice or manner during inspection had been raised by any other provider. Mrs C stated that she knew that another provider (Provider 1) had raised a very similar concern about Officer 1.

7. During the Care Commission's investigation of the complaint, Officer 1 and Officer 3 were interviewed. Officer 1 stated that she could recall no actions that would have led to the Nursery staff considering her conduct as inappropriate. Officer 3 explained that she had asked Officer 1 to accompany her on the inspection as she had some concerns and considered it would be useful to have a colleague present. She stated that the presence of another officer seemed to cause some confusion and anxiety. She also stated that Officer 1 had told her that she found staffing arrangements at the Nursery confusing.

8. On 20 September 2006, the Care Commission wrote to Mrs C with the outcome of their review of the complaint. They stated that the investigating officer had interviewed all five Nursery staff who had made statements to Mrs C and that questionnaires were used. They explained that the responses to the questions were inconsistent in their description of what had happened on the day of the inspection. They referred to the style of questioning being different to what they had experienced previously but did not go into specific details of what they found to be unprofessional. The investigating officer indicated that, due to inconsistencies, she was unable to uphold the complaint. The review concluded that the method of investigation of the original complaint had been appropriate and that the decision reached had been based on the available evidence and was reasonable in the circumstances. The Care Commission referred Mrs C to the Ombudsman if she was not satisfied with their response. Mrs C complained to the Ombudsman on 4 October 2006.

9. On 11 December 2006, Mrs C made a separate complaint to the Care Commission about Officer 2. She raised concerns about the fact that Officer 2 had stated that no other concerns had been raised about Officer 1 when she knew that Provider 1 had raised similar concerns. She also raised concerns that her original complaint had not been identified as a complaint by the Care Commission.

10. On 13 March 2007, the Care Commission wrote to Mrs C with the outcome of their investigation into her new complaint. They explained that Officer 2 had sought to follow the principles of the Care Commission's complaints procedure by seeking to address the issues raised quickly at the point of service delivery, which is the first level of the complaints procedure. They also explained that, at the time he had written to Mrs C, Officer 2 had not been aware that another provider had concerns about Officer 1. The investigation stated that there was a lack of clarity in the complaints procedure regarding the informal and formal process and that the Care Commission were reviewing the procedure.

11. The complaints from Mrs C which I have investigated are that:

- (a) Officer 1 spoke to the Nursery staff in an unprofessional way during the inspection;
- (b) the Care Commission did not carry out an adequate investigation of Mrs C's complaint:
  - (i) Mrs C's complaint was not initially identified as a complaint;

- (ii) the Care Commission did not take into account similar concerns which had been raised about Officer 1 when investigating Mrs C's complaint;
- (iii) the Care Commission did not ask the correct questions of staff who were interviewed; and
- (iv) Mrs C's complaint was not passed to the Care Commission Review Committee in accordance with their complaints process.

## **Investigation**

12. During my investigation of this complaint, I examined background documentation provided by Mrs C and by the Care Commission. This included correspondence between Mrs C and the Care Commission, statements made by staff from the Nursery, notes from interviews carried out with Officer 1 and Officer 3, and the questionnaires used during the interviews with Nursery staff about the inspection. I also discussed the complaint with Mrs C and met with representatives of the Care Commission to discuss the first draft of this report.

13. 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 drafts of this report.

### **(a) Officer 1 spoke to the Nursery staff in an unprofessional way during the inspection**

14. The Care Commission's Code of Conduct states that 'all employees must behave in a courteous and helpful manner when in contact with stakeholders'. The Care Commission's Complaints Procedure definition of a complaint includes 'expression of dissatisfaction about the competence, attitude or performance of members of Care Commission staff whilst carrying out duties'.

15. In her complaint to the Care Commission Mrs C complained that, during the inspection of the Nursery, questioning from Officer 1 had made staff 'feel silly' and that Officer 1 was 'talking down' to them. Mrs C provided me with four written statements made by her staff. These statements were also provided to the Care Commission during their investigation of the complaint. These statements describe that Officer 1:

- 'made me feel thick', that 'it wasn't the questions, it was the way she asked them ... in an abrupt manner' and that 'I felt she spoke down to me';
- 'spoke in a way to make me feel stupid as though I wasn't explaining myself properly ... felt like getting in trouble from a school teacher';

- 'made me feel silly, like she was looking down on me'; and
- 'seemed to be looking down on me' and 'made me feel as though I wasn't good enough to work in the kitchen'.

16. During their investigation of the complaint, the Care Commission interviewed the Nursery staff using a questionnaire relating to Officer 1's conduct during the inspection. The content of the questionnaire is reproduced at paragraph 48 of this report.

17. Two of the Nursery staff interviewed stated that this was the first inspection they had been involved in, that they were not sure what to expect and were nervous. The other three staff interviewed had experienced inspections previously. The comments made by the staff and recorded by the Care Commission include:

Staff member 1

- 'I felt horrible';
- 'the way in which I was spoken to [was inappropriate]';

Staff member 2

- '[Officer 1] made me feel uncomfortable';
- 'upset about the way [Officer 1] had spoken';

Staff member 3

- '[Officer 1] spoke in a way that was a bit belittling as if I did not know what I was talking about';
- 'the inspection should not be a horrible experience, it should be a learning experience';

Staff member 4

- 'felt a bit intimidated, made me feel a bit silly';
- 'not so much what she said but way she said it'; and

Staff member 5

- 'was abrupt – made me feel really silly. I was taken aback by her attitude. She made me feel stupid the way she asked questions. The questions were fair enough but her manner was not good'.

18. The Care Commission also briefly spoke to seven other members of Nursery staff who stated that they had no concerns of their own about Officer 1.

19. During the investigation of the complaint, Officer 1 stated that she felt she was professional at all times in her conduct and that she recalled no actions that would have led to staff considering her conduct inappropriate. She stated that some of the information which she had received from staff had been confusing and that staff had appeared confused and unable to answer the questions asked. Officer 3 stated that she had perceived Officer 1's conduct and interaction as appropriate. However, the Care Commission also commented that 'during the inspection [Officer 1] and [Officer 3] spent little time together as they were inspecting different areas of the service during the day'. The Nursery staff interviewed reported that when Officer 1 and Officer 3 were together they 'had no concerns'. However, they perceived that while Officer 1 'was on her own ... her conduct and interaction were inappropriate'.

20. The Care Commission's complaint report acknowledged that the Nursery staff perceived Officer 1's conduct as abrupt but stated that Officer 1 felt that she was professional in her manner throughout the inspection. It acknowledged that there was some confusion about the information provided by the Nursery staff and explained that there was the need to obtain sufficient corroborative evidence during the inspection. Staff commented during the interviews that it was not the content of any questions that was of concern but the tone and manner of Officer 1 they found unacceptable. The report concluded that while staff spoken to found that Officer 1 was not as friendly as Officer 3, this did not mean that Officer 1 behaved inappropriately. It went on to state that, whilst it was accepted that some staff felt Officer 1's conduct to be inappropriate, there was no evidence that Officer 1 did not conduct the inspection professionally.

21. After her complaint had initially been investigated by the Care Commission, Mrs C became aware that Provider 1 had raised similar concerns about Officer 1. During a meeting to discuss their concerns, Provider 1 was informed that they could make a formal complaint if they wished. Provider 1 stated that they did not wish to make a complaint. These concerns were, therefore, not investigated by the Care Commission or the Scottish Public Services Ombudsman and it is not possible to determine the factual basis of Provider 1's concerns.

22. Officer 2 stated that he only became aware of the concerns raised by Provider 1 on 4 April 2006 following the meeting that was held. He explained that Officer 1 had undertaken a long and complex investigation following which a conditions notice was imposed upon Provider 1. Officer 2 stated that Provider 1 had issues with the legitimacy of the complaints process and the perceived injustices of the enforcement notice and that any concerns he was aware of from Provider 1 had been in connection with those issues.

*(a) Conclusion*

23. I have to reach a conclusion whether, on balance, there is sufficient evidence to uphold a complaint that Officer 1 spoke to Nursery staff in an unprofessional manner.

24. Five members of staff reported concerns about Officer 1's manner and seven did not report any concerns. However, I cannot decide this case on the simple basis that a majority of staff raised no concerns about Officer 1. I have to decide whether, in the overall context, the fact that five members of staff said they found Officer 1's manner inappropriate is sufficient evidence to find that she was unprofessional.

25. In reaching a conclusion I have borne in mind comments from the Care Commission that inspections can be challenging and stressful. However, I have also noted that some of the staff who expressed concerns had experienced inspections before. I have also noted that no member of staff objected to the questions asked by Officer 1, what they objected to was her tone and manner. I see no reason to believe that the concerns of the staff members arose from the stress or challenges of the inspection itself.

26. In their reports on Mrs C's complaint, the Care Commission accepted that some staff felt Officer 1's conduct to be inappropriate and perceived it to be abrupt. There is nothing in the documentation to suggest that they considered that the witnesses were unreliable, and I can see no reason to do so.

27. I have noted that the Care Commission's Code of Conduct states that 'all employees must behave in a courteous and helpful manner when in contact with stakeholders'. I consider it would be unprofessional for a member of the Care Commission staff to breach their Code of Conduct. In my view the statements from five members of staff provide evidence that their experience

was that she did not 'behave in a courteous and helpful manner when in contact with stakeholders'.

28. I have considered the evidence from all of the Nursery staff and from Officers 1 and 3. I have concluded that there is sufficient evidence that, on the balance of probabilities, Officer 1 spoke to some staff in an unprofessional manner. In these circumstances I uphold the complaint.

*(a) Recommendations*

29. In the Care Commission's first response to Mrs C's complaint, Officer 2 recognised that the Care Commission should be more sensitive to the feelings of staff at a regulated service and that he would keep the issues raised about Officer 1 under review as part of the Care Commission's regular supervision process. I consider that this was an appropriate response. However, in subsequent responses to the complaint, the Care Commission stated that there was no evidence that Officer 1's actions or behaviour were inappropriate. I do not consider that was a conclusion which could safely be reached from the information available and I criticise the Care Commission for dismissing Mrs C's concerns as unsubstantiated. Five members of staff gave similar evidence to the effect that they had found her manner to be condescending and abrupt.

30. The Care Commission have stated that they will keep the issues raised under review as part of their supervision process. This is appropriate and the Ombudsman has no further recommendations to make.

**(b)(i) Mrs C's complaint was not initially identified as a complaint**

31. Mrs C's letter of 3 March 2006 clearly stated that she wished to make a complaint. She was, therefore, surprised when the response to her complaint informed her of the process for making a formal complaint. Mrs C also raised concerns that, because complaints were not initially logged as complaints, information about complaints against the Care Commission was not available to the public or internally.

32. One of the definitions of a complaint given in the Care Commission's complaints procedure is 'an expression of dissatisfaction about the competence, attitude or performance of members of Care Commission staff whilst carrying out duties'.

33. The Care Commission's complaints procedure is the same for complaints against service providers and for complaints about themselves. There are four stages to the complaints procedure. At the first stage, the Care Commission will make all reasonable attempts to resolve any complaint informally without the necessity for a visit to the care service or formal interviews. The process states that 'this will be appropriate where the Care Commission may have a liaison role in resolving minor matters of service delivery between the complainant and the service provider'. It makes no mention of how the first level will be used during the investigation of internal complaints.

34. Level 2 of the process is described as 'a more formal stage for complaints either unsuitable for or not resolved at level 1. This process requires complaints to be formally investigated and responded to'.

*(b)(i) Conclusion*

35. It is potentially confusing for the Care Commission to have a single complaints procedure to cover complaints against themselves as well as against service providers. Further, it is difficult to locate the section of the policy which explains how complaints about the Care Commission itself will be dealt with. The Care Commission has now produced new internal guidance on the procedure to be followed for complaints about their staff and the Ombudsman considers that this development will be useful.

36. Officer 2's letter to Mrs C was confusing in the way that it informed her how to make a formal complaint. I can understand that Mrs C considered she had already made a formal complaint by putting her concerns in writing and sending them to Officer 1's manager. It would have been more appropriate for Officer 2 to explain to Mrs C how she could pursue her complaint further rather than how she could raise a formal complaint. It is understandable that Mrs C may have considered that her complaint had not been taken seriously when Officer 2 referred to it as not being a formal complaint.

37. Officer 2 did, however, carry out an initial investigation of the complaint as described in level 1 of the procedure. Given that the complaints procedure is not particularly clear about how it applies to complaints about the Care Commission, it is also not clear when they consider it appropriate to deal with an internal complaint at level 1. However, the Ombudsman does consider it best practice to address a complaint locally in the first instance and to avoid escalation if possible.

38. I do not think it can be said that the Care Commission failed to recognise Mrs C's complaint as a complaint. In his response to Mrs C, Officer 2 thanked her for her letter 'complaining about the actions of Officer 1'. He also responded in detail to her concerns as well as informing her how she could pursue these further. The confusion arose due to the wording of Officer 2's letter to Mrs C and this may have been because he was using the language of the Care Commission's complaints procedure in his response to her. This language is not necessarily familiar to the wider public. Although this was the case, I consider that Mrs C's complaint was identified as a complaint and responded to under the first stage of the Care Commission's complaints procedure. In these circumstances, I do not uphold this complaint.

**(b)(ii) The Care Commission did not take into account similar concerns which had been raised about Officer 1 when investigating Mrs C's complaint**

39. Provider 1 raised concerns similar to those raised by Mrs C; however, Provider 1 chose not to pursue their complaint which was, therefore, not investigated. Mrs C wrote to Officer 2 to make him aware of Provider 1's concerns and Officer 2 responded that 'as no formal complaint had been made [by Provider 1] it would have been inappropriate for any consideration to be given to this during the investigation of [Mrs C's] complaint'.

*(b)(ii) Conclusion*

40. I understand that the Care Commission investigates complaints by seeking corroborative evidence for the incident complained of. It is good practice to take into account reliable evidence from similar concerns or complaints when investigating a complaint so that it can be determined whether a pattern is emerging.

41. Provider 1's concerns were very similar to Mrs C's and I can understand why she considered them to be relevant to her complaint. The reason given by the Care Commission for not giving any consideration to Provider 1's concerns in this context was that no formal complaint had been made.

42. I agree that it would have been inappropriate to rely on this evidence in the investigation of Mrs C's complaint; not because Provider 1 had not made a formal complaint but because their concerns had not been substantiated or investigated. I consider that the Care Commission should give full

consideration to any apparently relevant evidence provided by the complainant during the investigation of a complaint in order to determine whether it is admissible and relevant. If they decided that it was not relevant, a full explanation of why this was the case should have been given to the complainant.

43. To the extent that an appropriate explanation for why these concerns were not taken into account was not provided to Mrs C, I partially uphold this complaint. I consider that the Care Commission's failure to provide an explanation gave rise to this complaint in its current form. Without an explanation Mrs C could not have known why the concerns had not been taken into account.

44. The Care Commission has a new complaints management system in place which will allow them to monitor all complaints raised against them. The Ombudsman welcomes this development which should help the Care Commission to identify any recurring themes in the complaints which they receive both informally and formally so that these can be appropriately addressed.

*(b)(ii) Recommendation*

45. The Ombudsman recommends that the Care Commission take steps to ensure that all evidence provided by complainants is appropriately considered and that explanations are provided, where appropriate, for why particular evidence cannot be relied upon.

**(b)(iii) The Care Commission did not ask the correct questions of staff who were interviewed**

46. When Mrs C complained to the Care Commission, she reported that a number of staff had expressed concerns about Officer 1. She later sent written statements from four members of staff to the Care Commission. These statements explained the staff's concern with Officer 1.

47. During their investigation of the complaint, the Care Commission interviewed five members of staff from the Nursery. This included the four members of staff who had made the original statements.

48. The Care Commission used a questionnaire as the basis for their interviews with staff. The questions asked were as follows:

- Can you tell me how much experience you have, how long you have worked in this service and what your experience of inspection has been so far?
- What preparation did you undertake for the inspection?
- Are you aware of the complaint that has been made? Your statement will be used as part of that investigation and will be confidential.
- Can you tell me what happened during the inspection? What room were you in? What contact did you have with the officers?
- What did you witness that was inappropriate to you and why was it inappropriate?
- Have you seen the inspection report? How do you feel about the report?
- Did you make a statement to the provider? Why did you feel the need to do this? What were you hoping to achieve?
- These statements have been made in relation to the Officer, did you make any of these and why?
- Are there any other issues that I have not asked you about that you feel are important in relation to the inspection?
- Any questions or points you would like to add?

49. Mrs C stated that, in her opinion, the Care Commission should also have asked staff whether they had overheard what Officer 1 had said. She stated that, if this had been asked, staff would have had the opportunity to give corroborative evidence.

*(b)(iii) Conclusion*

50. I consider that the questions which were asked of staff during the interview gave them sufficient opportunities to describe any inappropriate comments or behaviour by Officer 1. The staff were aware of the complaint which was being investigated and could have mentioned any relevant information during the interview. For this reason, I do not uphold this complaint.

**(b)(iv) Mrs C's complaint was not passed to the Care Commission Review Committee in accordance with their complaints process**

51. The fourth and final stage of the Care Commission's complaints procedure is review by the Committee. In their letter of 20 September 2006, the Care Commission referred Mrs C to the Ombudsman after the third stage of the complaints procedure and did not inform her of the possibility of requesting a review by the Committee.

52. The Care Commission stated that all service providers have a copy of their complaints procedure and that Mrs C was aware of the review procedure.

*(b)(iv) Conclusion*

53. The Care Commission complaints procedure states that a complainant can ask for a review by the Committee. This was not offered in this case and Mrs C was referred to the Ombudsman. The Care Commission should have followed their complaints procedure and offered Mrs C a review by the Committee before informing the complainant that she could complain to this office. The procedure does not give them any discretion as to whether or not to do this. I, therefore, uphold this complaint.

*(b)(iv) Recommendation*

54. The Ombudsman recommends that the Care Commission:

- (i) remind relevant staff that the internal complaints procedure should be exhausted before referring a complainant to the Ombudsman; and
- (ii) apologise to Mrs C for the failings identified in this report.

55. The Ombudsman asks that the Care Commission notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

The Care Commission	The Scottish Commission for the Regulation of Care
Mrs C	The complainant, owner and manager of the Nursery
The Nursery	Mrs C's nursery
Officer 1	A Care Commission officer
Officer 2	The Team Leader of Officer 1's team
Officer 3	A Care Commission officer
Officer 4	The Care Commission's Comments and Complaints Co-ordinator
Provider 1	A service provider who raised concerns about Officer 1