

Scottish Parliament Region: West of Scotland

Case 200700058: West Dunbartonshire Council

Summary of Investigation

Category

Local government: Social Work/complaints handling (inc Social Work complaints procedures)

Overview

The complainant, Mr C, raised a number of concerns with West Dunbartonshire Council (the Council)'s Social Work Department about the care being provided by their agents to his uncle. Mr C pursued this complaint through the Council's complaints procedure and, as he remained unhappy, on 23 November 2007, he requested that a Social Work Complaints Review Committee (the CRC) hear his complaint. The CRC was not held until 27 October 2008.

Specific complaint and conclusion

The complaint which has been investigated is that the Council delayed unreasonably in holding a CRC (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the failings identified in this report;
- (ii) review their procedures to ensure that the CRC membership is kept up to date at all times;
- (iii) ensure that, in future, any extension to the time limits, as set out in the Directions, is agreed by the complainant(s); and
- (iv) consider, as part of their review of procedures, whether there is a need for specific literature to be provided to Social Work complainants on the complaints procedure.

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

Main Investigation Report

Introduction

1. In May 2007, the complainant, Mr C raised a number of concerns with West Dunbartonshire Council (the Council) about the care arrangements for his uncle (Mr A). Mr A is a vulnerable adult who requires a high level of personal care and the Council's Social Work Department, through their agents, are responsible for providing this. Mr C pursued his complaint through the Council's complaints procedure and, on 23 November 2007, he requested that a Social Work Complaints Review Committee (CRC) be held to hear his complaint.

2. Mr C originally approached the Ombudsman's office with his complaint on 9 November 2007. There was further correspondence between Mr C and this office between November 2007 and July 2008 while Mr C waited for a CRC to be held. On 25 July 2008, Mr C wrote to this office to explain that a CRC had still not been held. He complained that the Council had delayed unreasonably in holding a CRC and I decided to investigate the complaint in August 2008. The CRC was held on 27 October 2008, 11 months after Mr C's initial request.

3. The complaint from Mr C which I have investigated is that the Council delayed unreasonably in holding a CRC. However, in the course of my investigation, I also made enquiries of the Council about how they deal with Social Work complaints and what information is provided to complainants about their right to request a CRC.

Investigation

4. In investigating this complaint, I have reviewed correspondence between Mr C and the Council; made a number of written enquiries to the Council; had sight of the Council's Social Work complaints procedure (the complaints procedure); and reviewed the Council's files on the complaint and their complaints procedure. In addition, I interviewed relevant Council staff who were involved in the complaint. I also considered relevant legislation and guidance.

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.

Legislative Background

6. Section 5B of the Social Work (Scotland) Act 1968 gave the Secretary of State the power to require local authorities to establish procedures for considering complaints relating to their social work functions. In 1996, the Social Work (Representations) (Scotland) Directions 1996 (the Directions) were issued with guidance notes. These stated that if a complainant remained unsatisfied with a response from a local authority the matter should be referred to a CRC. The CRC can make recommendations to the social work or other committee who, in turn, should decide what action to take and notify the complainant in writing of that decision. The Directions set out rules for the membership of such committees and say that members should have experience of either social work matters or the conduct of proceedings before tribunals. The Chairperson should be independent and have knowledge of both.

7. The Directions also set out a number of time limits. The local authority's response to the initial complaint should be issued within 28 days. The report by the CRC to the responsible committee should be made within 56 days of a request that the local authority's decision on the complaint be reviewed. Within 42 days of receiving the CRC report the local authority should decide what action to take and notify the complainant in writing. The Directions provide that these limits can be extended if this is agreed by both the complainant and the local authority.

8. The Scottish Office Circular¹, which accompanied the Directions, stated that:

‘...the formal Complaints Review Committee (CRC) should aim to bring an objective and independent eye to bear on complaints to give the public additional safeguards that their wishes and needs are being fairly considered and their complaints properly investigated.’

Complaint background

9. On 8 November 2007, the Ombudsman received a complaint from Mr C regarding the actions of the Council's Social Work Department in relation to the care of his uncle, Mr A, a vulnerable adult living in the community and requiring a high level of personal care, provided through the Council's agent.

¹ Circular No SWSG5/1996

10. On 28 May 2007, Mr C had submitted a formal complaint to the Council detailing 25 instances where he felt that the care provided by the Council, through their agent, fell below an acceptable standard. This included, for example; failure to properly administer Mr A's medication; care diaries being inappropriately altered; and his concerns about the provision of essential personal care to Mr A. On 27 June and 20 July 2007, the Head of Social Work (Operations) responded to Mr C's complaints. In the closing paragraph of each response she explained:

'If you are dissatisfied with the outcome of the investigation undertaken thus far, you can contact the Director of Social Work Services and ask for further discussions to attempt to resolve your complaint or ask to have the complaint referred to the complaints subcommittee [the CRC].'

11. Mr C initially complained to the Ombudsman's office on 9 November 2007 (see paragraph 2), when it was explained that the Ombudsman would normally only be able to consider his complaint once the statutory Social Work complaints procedure (see paragraphs 6 to 8) had been exhausted and the complaint had been heard by a CRC. In view of this, enquiries were made of the Council from November 2007 to August 2008, on the basis that a CRC would be held. However, when it became clear that, despite the Council advising us in January, February and April 2008 that they were endeavouring to hold a CRC and that one would be held in early May 2008, a CRC had still not been held, I decided to investigate the complaint. I wrote to both Mr C and the Council advising them of this decision on 25 August 2008. Paragraphs 13 to 23 detail our enquiries prior to the decision to investigate and paragraphs 24 to 35 detail the information obtained during the investigation.

12. On 23 November 2007, Mr C wrote to the Chief Executive of the Council requesting his statutory right of appeal to a CRC. I have seen the letter dated 7 December 2007 from the Chief Executive, which advised Mr C that it had been some time since the Council had convened a CRC and the Chief Executive asked Mr C to bear with them. On 28 December 2007, Mr C wrote to the Ombudsman again as he had not received any further information from the Council regarding the CRC.

13. Following this letter, we made enquiries of the Council. A solicitor for the Council (the Solicitor) responded by letter on 17 January 2008, explaining that a report was to be put before the Social Work and Health Improvement Committee (the SWHI Committee) on 23 January 2008 in order that a CRC

could be set up. Once this had taken place, it was anticipated that the complaint could be heard within two weeks. Mr C was informed of this.

14. On 24 January 2008, the Solicitor confirmed to the Ombudsman's office that, at the SWHI Committee meeting on 23 January 2008, the members had called for more information before finalising the CRC arrangements. I have had sight of the minutes of the SWHI Committee meeting of 23 January 2008, which confirms that this was the case. The next meeting was due to take place on 19 March 2008 and, therefore, it was likely that it would be March/April 2008 before the CRC could convene. In the meantime, the Council proposed arranging a meeting between Mr C and the Executive Director of Social Work and Health (the Director).

15. On 12 February 2008, the Solicitor confirmed to us by letter that Mr C's case could not be considered by a CRC because many of the elected members no longer existed in that capacity and it would be impossible to contact the lay members because a CRC last sat ten years ago.

16. At this time, the Director wrote to Mr C offering to meet with him to discuss the complaint. The Director also apologised that it had not yet been possible for Mr C's complaint to be heard by the CRC. Mr C responded to this letter on 16 February 2008 indicating that he would be happy to meet with the Director but explained that he still wished the complaint to be heard by a CRC, as was his statutory right. On 10 March 2008, the Director responded to this letter apologising once again for the delay and offering to meet with Mr C.

17. On 25 February 2008, the Solicitor confirmed to the Ombudsman's office that, once the SWHI Committee had approved the CRC arrangements, the changes in the report could be implemented soon after, however, in order to progress Mr C's complaint, the Council intended to approach members of the Education Appeals Committee to establish whether they would be willing to sit to look at Mr C's complaint. Mr C was informed of this.

18. Following the SWHI Committee meeting on 19 March 2008, the Solicitor confirmed to the Ombudsman's office in April 2008 that a temporary committee would be set up to hear the complaint and this had received approval from the SWHI Committee. She explained that the members were being contacted for suitable dates and it was anticipated that the complaint could be heard by late April/early May.

19. I have also had sight of correspondence which shows that, on 15 April 2008, the Council offered Mr C five dates for the complaint to be heard and explained that the CRC would be made up of existing Education Appeals Committee members. On 18 April 2008, Mr C made a request for some information from the Council in relation to his uncle under Freedom of Information Legislation and, on 20 April 2008, he and other family members accepted the date of 15 May 2008 for the CRC to be held. On 21 April 2008, he received an apology from the Council that, due to the unavailability of a committee member, the CRC could no longer be held on 15 May 2008. Mr C informed the Council that he and his family could not make any other dates. On 1 May 2008, Mr C received a letter from the Solicitor (which I have had sight of) stating that:

‘Further to our telephone conversation today, I note that the two remaining dates of 19 and 20 May are unsuitable for you. I have asked the Admin Section to see what other dates are suitable for the Committee and these shall be forwarded to you as soon as possible.’

20. On 16 May 2008, the Council wrote to Mr C advising him that the information requested on 18 April 2008 could not be released because it related to other living individuals (Mr A and other family members) and, as a result, constituted personal data and was exempt from disclosure.

21. On 25 July 2008, Mr C wrote to this office again explaining that, from the 1 May 2008 to date, he had had no further communication from the Council regarding suitable dates for the CRC to be held. Mr C expressed concern that the complaints he had raised could have potentially serious consequences for vulnerable adults if unaddressed and was unhappy about the length of time they had been left unresolved.

22. On 1 August 2008, I wrote to the Council asking for their comments on why a CRC had not been held to date. The Chief Executive responded explaining that, on 1 August 2008, Mr C had been granted a Guardianship Order appointing Mr C and another family member joint guardians of Mr A, therefore the information which could not be released previously (see paragraph 20) could now be made available to Mr C. As a result, the Council wrote to Mr C on 7 August 2008 asking him to provide available dates in September/October 2008 so that a CRC could be arranged.

23. In response to my further enquiries as to whether the Guardianship application had affected when the CRC could be held, the Solicitor confirmed it had not and explained that her understanding was that, since May, the Council had been waiting for Mr C to contact them with dates. I decided to investigate the complaint on 25 August 2008 (see paragraph 11).

Complaint: The Council delayed unreasonably in holding a CRC

24. On 24 September 2008, the Head of Legal, Administrative and Regulatory Services confirmed that a date had been agreed with Mr C to hold the CRC on 27 October 2008. In response to my enquiries about the delay, he explained that the principal initial delay was due to the existing structures and personnel for the CRC no longer being appropriate due to the passage of time, since a CRC had last been held ten years ago. He explained that the previous procedures required to be changed because of changes within the wider Council and social work regulatory environment and, since a number of previous CRC members were no longer available, it was essential that the situation be reported to the members to approve the new arrangements. He stated that:

‘Whilst undoubtedly unfortunate to the progress of [Mr C]’s complaint, the establishment, remit and procedures to be adopted in respect of the CRC are properly matters falling to Members to determine, and it is considered appropriate that, where they believe their decision making would benefit from further information, they seek such information. Additionally, the willingness of officers and members to establish a Pro Tempore [see paragraph 18] Committee to advance the case indicated a willingness, and indeed desire, to move matters along.’

25. He suggested that the delay up until the cancellation of the first meeting was: firstly, due to the absence of an appropriate committee structure and membership given the time since it was last required; secondly, the requirement that the Council put the new procedures before the SWHI Committee and allow them to ask for further information; and, thirdly, the cancellation of the scheduled meeting in May arising from one of the volunteer members being unavailable.

26. He also explained that, following the cancellation of the meeting in May, there was a period between April and August where neither the Council or Mr C suggested alternative dates. However, Mr C was making requests for information during this time and he was also applying for a Guardianship Order

for Mr A (see paragraph 22). He explained that senior management in Legal, Administrative and Regulatory Services were consulted and it appeared to them that the information requested by Mr C was required to present his case and, therefore, until such a time as the Council were clear whether or not such information would be available, there would be little point in attempting to arrange a further CRC date. He did concede that, in hindsight, it may have been more appropriate for the Council to give Mr C the option of either proceeding with an earlier CRC date or waiting until settlement of the guardianship issue and subsequent release of papers.

27. I have had sight of internal emails between the Social Work and Legal departments of the Council which show that the review of the Social Work complaints procedure had been ongoing since 2005. This was confirmed by the Director and the Solicitor at interview. In the course of considering this information, I also noted that, in early 2005, a member of the public had requested a CRC and there was an awareness within the Council at that time that the new complaints procedure had not been approved by the SWHI Committee and that the CRC membership was out of date. However, the person withdrew the request and, in the event, a CRC was not required. The Director explained that it was unfortunate that the difficulties which arose in this previous case were not resolved at that time, as this could perhaps have prevented the delays experienced by Mr C.

28. At interview, the Director explained that, when Mr C requested a CRC in November 2007, the new procedure required to be approved by the SWHI Committee prior to its terms being implemented, which the Head of Legal, Administration and Regulatory Services had referred to in his response of 24 September 2008 (see paragraph 24). He also explained that he required the SWHI Committee to approve that a temporary CRC could be set up specifically to hear Mr C's complaint (see paragraph 18).

29. It was also the case that the CRC membership had not been kept up to date since the last CRC was held in August 1998. The Director explained that every committee has to be ratified with every new administration. In May 2007, there was a change in administration in the Council and, unfortunately, the membership of the CRC was not on the list of committees to be approved. He said that this meant that there was no previously existing membership for the CRC.

30. At interview, this aspect was explored in greater depth with a Senior Administration Officer from the Committee Administration Department within the Council (the Committee Officer). He explained that his department was responsible for arranging committee meetings and keeping membership of existing committees up to date. When asked specifically about the list of Committees which had been approved, he provided a copy of the list (the Standing Orders of the Council) which showed that the CRC had been included. However, he explained that, in committees like the CRC which is made up of non-elected members (ie, not Councillors, unlike most other Committees in the Council), the membership of the CRC required to be approved at the first meeting of the SWHI Committee following the new administration. This would normally be done through a report by the Director of Social Work. Only once the membership had been approved by the SWHI Committee could the membership be kept up to date by the Committee Administration Department.

31. It was confirmed by the Committee Officer that, on this basis, if the membership of the previous CRC had been kept up to date through the correct approval process after every new administration, the CRC would have been able to be held (albeit a review of the complaints procedure was being conducted) and the delay incurred in this case could have been avoided.

32. When asked what action had been taken to re-arrange a date for committee, the Committee Officer advised at interview that the Committee Administration Department had received no instruction from the Legal Department to proceed with more dates. He also advised that it had been assumed that, because Mr C was requesting information (see paragraph 19), he wished to wait for the result of the guardianship application before proceeding with the CRC. However, there is no evidence to suggest that this was clarified with Mr C or that, other than the Director's letters of 8 February and 10 March 2008 to Mr C when an apology was given for delay, that an apology was issued to Mr C for the further delay which occurred.

33. The Solicitor, who had written the letter of 1 May 2008 (see paragraph 19), explained at interview that she did not know why further dates were not suggested to Mr C and that she had thought that the Committee Administration Department were providing Mr C with further dates. She acknowledged that she should perhaps have pressed the department to do this.

34. During my investigation, the Manager of Legal Services offered to take on a co-ordinating role so that communications between departments are properly maintained. The Director confirmed that the new complaints procedure has now been approved by the SWHI Committee, Committee members for the CRC have been recruited and training has been organised. The Committee Officer explained that, because there is now a membership in place, the Committee Administration Department will now take responsibility for organising meetings and keeping the membership up to date.

35. In the course of this investigation, I asked the Council how they deal with Social Work complaints and what information is provided to complainants about their right to request a CRC. In the year April 2007 to April 2008, the Council logged 25 complaints against the Social Work Department. The Section Head - Strategy for the Social Work Department at the Council co-ordinates all complaints received against the Social Work Department. She explained, at interview, that Social Work complaints are dealt with through the Council's corporate complaints procedure but complainants are informed of their statutory right to request a CRC (unlike other corporate complaints). I have had sight of anonymised correspondence which confirms that this happens. There is no specific literature provided to Social Work complainants about this procedure, although there is guidance for staff which is available to complainants on request. She offered an assurance that she would now monitor CRC complaints more closely to ensure that the timescales set down by the Directions were met.

Conclusion

36. The Directions (see paragraphs 6 to 8) make clear the circumstances in which a CRC should be held and that the outcome should be reported to the responsible committee within 56 days of the complainant requesting a CRC. In this case, Mr C initially requested a CRC on 23 November 2007. The complaint was not heard by a CRC until 27 October 2008, some 11 months later.

37. It is important that members of the public can access their right to a CRC quickly and easily and, in this regard, the Directions impose time limits for Social Work complaints to be dealt with under this procedure.

38. The Council have provided reasons why they were unable to hold a CRC to deal with Mr C's request within the required timescale. The Director's offer to meet with Mr C and the decision to hold a temporary CRC to expedite the

hearing of Mr C's complaint shows that the Council recognised the failings in their procedures and were attempting to address Mr C's complaint at that time.

39. However, the Council have accepted, with hindsight, that much of the delay in holding a CRC in Mr C's case could have been avoided if they had had the appropriate procedures in place. The Council have confirmed that the review of their complaints procedure had been ongoing for over two years by the time Mr C made his request for a CRC. There were no interim arrangements in place for a CRC while this review took place, in part because the previous membership had been allowed to lapse. Nor had the appropriate approval of the membership of the CRC by the relevant committee, in this case the SWHI Committee, been kept up to date. In effect, because the Council had allowed the membership of the CRC to lapse, there was no mechanism in place to hold a CRC. This became apparent to the Council in 2005 following a request for a CRC to be held (see paragraph 27). Although that complaint did not actually reach CRC stage, this was a missed opportunity to remedy the outstanding issues associated with the complaints procedure review and, in particular, the membership of the CRC.

40. The delay was extended by the breakdown in communication between the Legal Department and the Committee Administrator about Mr C being provided with further dates for the CRC to be held and, as a result, neither department took action. Also, there was an assumption by the Council that, because of the ongoing information requests and guardianship application, Mr C would not want to progress with the CRC at that time. The Council have accepted that, with hindsight, it may have been more appropriate to give Mr C the option of either proceeding with an earlier CRC date or waiting until the settlement of the guardianship issue and subsequent release of papers.

41. It is clear in this case that the Council did not comply with the Directions about holding a CRC in the requisite timescale and, although I do not see any evidence that the delay was intentional on their part, by failing to hold the CRC earlier Mr C had to wait an unreasonable length of time before a CRC was held. In these circumstances, I uphold the complaint.

42. The Director has already apologised to Mr C for the delay in holding the CRC in his letters of 8 February and 10 March 2008, however, there has been no further apology for the further delays identified above following the issue of those letters. I have also noted that there is no specific literature provided to

Social Work complainants about the complaints procedure. The Ombudsman, therefore, has the following recommendations to make.

Recommendations

43. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for the failings identified in this report;
- (ii) review their procedures to ensure that the CRC membership is kept up to date at all times;
- (iii) ensure that, in future, any extension to the time limits, as set out in the Directions, is agreed by the complainant(s); and
- (iv) consider, as part of their review of procedures, whether there is a need for specific literature to be provided to Social Work complainants on the complaints procedure.

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

Explanation of abbreviations used

Mr C	The complainant
The Council	West Dunbartonshire Council
Mr A	The aggrieved, Mr C's uncle
CRC	Complaints Review Committee
The complaints procedure	The Social Work complaints procedure
The Directions	The Social Work (Representations) (Scotland) Directions 1996
The Solicitor	A solicitor who is an employee of West Dunbartonshire Council
The SWHI Committee	The Social Work and Health Improvement Committee
The Director	The Executive Director of Social Work and Health
The Committee Officer	A Senior Administration Officer from the Committee Administration Department of West Dunbartonshire Council

List of legislation and policies considered

The Social Work (Scotland) Act 1968

The Social Work (Representations) (Scotland) Directions 1996

Circular no SWSG5/1996