

**Case 200503492: The City of Edinburgh Council**

**Summary of Investigation**

**Category**

Local government: Hospital; Policy/Administration

**Overview**

The complainant (Mr C) alleged that, without checking its veracity, the City of Edinburgh Council (the Council) accepted, and kept on his file, information implying that he had been convicted and imprisoned for murder. He said that the Council then passed this information to a third party, which resulted in his and his partner's fertility treatment being suspended.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council passed unsubstantiated and incorrect information to a third party (*not upheld*);
- (b) the Council's Head of Service was allowed to remain at a Social Work Complaints Review Hearing while his appeal was decided (*not upheld*); and
- (c) in reporting their decision, the Council made an inappropriate reference to the Bichard Enquiry (*not upheld*).

**Redress and recommendation**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 17 March 2006 the Ombudsman received a complaint from Mr C complaining that, without checking its veracity, the Council accepted and kept on file information implying that he had been convicted and imprisoned for murder. He said that the Council then passed this information to a third party, which resulted in his and his partner's fertility treatment being suspended.

2. The complaints from Mr C which I have investigated are that:

- (a) the Council passed unsubstantiated and incorrect information to a third party;
- (b) the Council's Head of Service was allowed to remain at a Social Work Complaints Review Hearing while his appeal was decided; and
- (c) in reporting their decision, the Council made an inappropriate reference to the Bichard Enquiry.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C, his solicitors and MP, and the Council. I have also had sight of correspondence between the Council and the hospital where Mr C and his partner received infertility treatment (the Hospital) and the Social Work Review Committee's decision on Mr C's complaint. I have referred to the procedures for such reviews and have also made reference to the appropriate sections of the Human Fertilisation and Embryology Act 1990.

4. While I have not included in this report every detail investigated, 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.

#### **(a) The Council passed unsubstantiated and incorrect information to a third party**

5. Mr C had previously been married and lived in Edinburgh but, when that relationship broke down, he moved to Wales. Later, he formed another relationship but because he and his partner were having difficulty conceiving, they sought fertility treatment from the Hospital. However, Mr C said that on

30 September 2004 he received a letter from the Council's Social Work Department (now the Children and Families Department which became responsible for Children's Social Work Services under a recent review)) which said that they held information on file about him stating that he had been imprisoned for murder. He said this information was sent to the Hospital, the immediate consequences being that the fertility treatment was stopped.

6. I am aware from the information available to me that on 10 June 2004, the Hospital wrote to the Social Work Department referring to a previous telephone conversation. They said that Mr C and his partner had requested fertility treatment and, as they had a statutory obligation under the Human Fertilisation and Embryology Act and Child Protection Provision to ensure that there were no concerns regarding any child which may be born, they were seeking more information about a concern which had been indicated during the telephone conversation. An undated reply was sent by a social work assistant which said, amongst other things, that:

'...it has been documented in the file ... that [Mr C] has been imprisoned for murder. After much research I cannot confirm or deny this allegation'.

It was about this time Mr C said that his fertility treatment was suspended (see paragraph 5).

7. A further undated letter was sent by the Practice Team Manager from the Children and Families Team, in response to a letter dated 21 July 2004 from a consultant gynaecologist at the Hospital. It said:

'Following vigorous attempts to substantiate that (sic) the allegation that [Mr C] was imprisoned for murder, we have been unable to find any evidence to support this claim. The allegation would, therefore, appear to be unfounded'.

I have made enquiries and have been informed of the checks that were made.

8. Mr C's MP wrote to the Council on 23 November 2004 complaining about this and on 29 November 2004 the interim Director of Social Work wrote, explaining the circumstances surrounding the information being passed to the Hospital and the Council's view that the information they had held appeared to be unfounded. They

said they had rectified the situation and had alerted the Hospital to do the same. The Director confirmed to Mr C's MP that all reference to this information had been removed from the Council's records.

9. Mr C said he had been shocked to learn about the information the Council held on him and devastated at the consequences. He was unhappy with the reply to his MP and, therefore, he maintained his complaint. On 19 January 2005, his MP requested an investigation into the events described above. The Director of Social Work replied to the MP on 3 February 2005 saying that, prior to him contacting the MP before (see paragraph 8), the matter had been fully investigated by a senior manager who had not been previously involved in the case. In addition, advice had been sought from the Council Solicitor. He said that the outcome of the investigation was described in his earlier letter (of 29 November 2004). Mr C continued to be dissatisfied and he pursued his complaint through the Council's complaints procedure, which culminated in a re-evaluation of the facts and circumstances by a Social Work Complaints Review Committee on 29 August 2005 (meanwhile, it appeared that Mr C's fertility treatment came back on track around the middle of February 2005).

10. Mr C received the Complaints Review Committee's decision on 1 September 2005. This concluded that the Social Work Department was required to keep on record any concerns relating to the welfare of a child or children, whether substantiated or not, and to pass on such information when requested by an appropriate agency. Similarly, the Department had a statutory duty under the terms of the Human Fertilisation and Embryology Act and Child Protection Provision to pass on any information which may be of concern. This being the case, it said that the Social Work Department had had no alternative but, nevertheless, the Department had sought to make clear statements with regard to the status of the information held. They acknowledged the distress this incident had caused Mr C. As Mr C remained unhappy with this explanation, he submitted a formal complaint to this office in March 2006 (see paragraph 1).

*(a) Conclusion*

11. The Council received information from a third party alleging that Mr C had been involved in a murder. This had been logged on the case file involving his former family. Many years later the Council were approached by the Hospital,

asking whether there were any concerns about which they should know (see paragraph 6), and the Council were obliged to reply. They did so saying first, that the information could not be confirmed or denied and later, that it appeared to be unfounded. On receipt of this information, the complainant's and his partner's fertility treatment was suspended.

12. The Council told me in their response, dated 27 June 2006, that there had been much research and vigorous attempts to check the veracity of the information they passed to the Hospital and that they had sought to make clear statements about its status. However, they had no control over the action the Hospital then took.

13. I have every sympathy for the situation in which Mr C found himself but I cannot conclude that the sense of injustice he feels was a consequence of maladministration by the Council. When asked by the Hospital, the Council were under a legal obligation to report any concerns whether substantiated or not and, in Mr C's case, they sought to qualify the information. Accordingly, I am unable to uphold his complaint.

**(b) The Council's Head of Service was allowed to remain at a Social Work Complaints Review Hearing while his appeal was decided**

14. Mr C's complaint progressed through the Council's complaints procedure and culminated in a Social Work Complaints Review Hearing on 29 August 2005 (see paragraph 9). While he said that he had to withdraw when the Committee was reaching its decision, the Council's Head of Service was allowed to remain. He considered that this could have affected the Committee's independence and ultimate decision.

15. I have had sight of the Council's own internal guidance on the procedure for consideration of client complaints by Complaints Review Committee. Paragraph 4.4 states:

'The Director of Health and Social Care, or a Senior Manager who has previously not been involved in dealing with the complainer's representations shall act as adviser to the Review Committee. The role of the adviser will be to advise the Review Committee, at its request, on Departmental practice and procedures and on options which might be available for resolution. The

adviser would not be a member of staff who had investigated or responded to the original complaint, or matter under review.'

16. In response to my specific enquiry on this aspect of the matter, the Council replied on 27 June 2006 that the Head of Service's attendance at the Appeal Hearing was strictly in accordance with this guidance. They commented that, unlike in a court of law, the Committee required access to professional social work advice.

*(b) Conclusion*

17. Mr C felt that the continued presence of the Head of Service while the Committee reached its decision could have been to his disadvantage. However, I am satisfied that, throughout, this officer acted in accordance with the Council's stated procedures. This being the case, I do not uphold the complaint.

**(c) In reporting their decision, the Council made an inappropriate reference to the Bichard Enquiry**

18. Mr C said that he was disgusted to find reference to the Bichard Enquiry in the Social Work Complaints Review Committee Hearing decision. He said that this was entirely inappropriate, referring as it did to the murder of two young children.

19. I have seen the decision and the section referred to. This stated:  
'The Committee also noted that the Department awaited new guidance as a result of the Bichard Enquiry and expected this to provide fresh impetus to change within the protocols for partner agencies on exchange of information and intelligence between appropriate agencies'.

*(c) Conclusion*

20. I do not view this to be an inappropriate statement as it refers only to procedures, therefore, I do not uphold this aspect of the complaint.

28 November 2006

**Explanation of abbreviations used**

Mr C	The complainant
The Council	The City of Edinburgh Council
The Hospital	The hospital where Mr C and his partner received infertility treatment