

Case 200500907: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Complaint Handling; Delay

Overview

The complainant (Mr C) was concerned that there had been excessive delay by The City of Edinburgh Council (the Council) in arranging the Social Work Complaints Review Committee (CRC) he had requested.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to arrange the CRC within a reasonable time (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review their procedures for arranging Social Work Complaints Review Committees; and
- (ii) make a payment to Mr C of £200 for the unnecessary delay in arranging the CRC.

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

Main Investigation Report

Introduction

1. On 10 August 2005 the Ombudsman received a complaint from a man (Mr C) about The City of Edinburgh Council's (the Council) excessive delay in arranging a statutory CRC that he had requested on 15 June 2004. The CRC had not taken place at the time he complained to the Ombudsman.

2. The complaint from Mr C that I have investigated is that the Council failed to arrange the CRC within a reasonable time.

Investigation

3. I examined documents provided by Mr C; records provided by the Council, and the Council's written response to my enquiries. I also examined relevant guidelines set out in the Scottish Executive's Social Services Group's Circular No SWSG5/1996 'Community Care in Scotland: Local Authority Complaints Procedures', the Social Work (Representations Procedure) Scotland Directions 1996, and a copy of the Council's Complaints Procedures for Service Users (see Annex 2).

4. Mr C had not taken the complaint he referred to the Ombudsman through the Council's own complaints procedures. However, as this complaint concerned the Council's failure to handle his original complaint correctly, I decided that under the circumstances it would be unreasonable to expect him to do so before I investigated his complaint.

5. Mr C wrote to the Council on 15 June 2004 to request a CRC. He referred his complaint, about the Council's failure to arrange this, to the Ombudsman on 10 August 2005. Shortly after, the Council arranged for the CRC to take place on 29 September 2005. I proceeded with the investigation in order to establish the reasons for the delay, and determine whether the Council should take any further action to prevent such a delay recurring.

6. 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 the opportunity to comment on the draft of my report.

Complaint: The Council failed to arrange the CRC within a reasonable time

7. Mr C first complained in October 2002 to the Council about their handling of the social care funding of his wife's uncle. Mr C subsequently had a number of further concerns and queries, and was in frequent contact with the Council in an attempt to resolve the additional issues as they arose.

8. Mr C exchanged a number of letters with the Council in 2004, but remained dissatisfied with the responses he was given. He requested his complaint be referred to a CRC. The financial issues of the social care funding, relating to Mr C's family's contribution, were resolved in July 2004, but Mr C had outstanding concerns about the Council's handling of the case and he wanted further explanations. In particular, Mr C considered that the Council had called into question his family's honesty and integrity.

Chronology relating to Mr C's request to the Council for a CRC

4 June 2004 The Council's Interim Director of Social Work (Officer 1), wrote to Mr C requesting further information in order to resolve the funding issue.

11 June 2004 Mr C replied to Officer 1, and stated 'now it appears that you do not accept the authenticity of our legal documents. Under such circumstances I don't think there is any point in us trying to resolve this issue and I would now like a review.'

Mr C ended by stating 'I would still like a response to my letter and I would like to know how long I might expect to wait for a review. I would also like to know how this review will take place.'

15 June 2004 Mr C wrote to the Council Secretary, and stated:

'I have been having difficulties in resolving a problem with Edinburgh Social Work Department. I have been advised I should write to you as you will independently review my case. I am now asking you to carry out this review. I would also like

you to explain the form of the review and explain the obligations I have in the review. ... I hope you can at least get the Social Work Department to explain their actions to me and get them to uphold the Council's policy of openness.'

16 June 2004 Mr C wrote to Officer 1 providing the information requested in his letter of 4 June.

22 June 2004 Officer 2 replied to Mr C on behalf of the Council Secretary and told him that he had passed his letter to the Client Services and Complaints Office of the Social Work Department for comment, and would contact him as soon as he had a reply.

The same day, Officer 1 acknowledged Mr C's letters of 11 and 16 June 2004, and stated that he would provide a full response in the very near future.

20 July 2004 Officer 1 replied to Mr C's earlier letters. He also suggested a meeting in an attempt to 'fully explore and address these points without further misunderstandings'. Officer 1 stated he was aware that Mr C had already requested an appeal to the CRC, and advised that the meeting would not affect his right of appeal. He added 'You may wish to consider whether to proceed with this prior to or following our meeting.'

21 July 2004 Mr C telephoned the Council and declined the proposed meeting, but requested a written response to seven points he considered the Council had not dealt with, before proceeding to the CRC.

8 September 2004 Officer 1 wrote a comprehensive letter to Mr C, in an attempt to address the points that Mr C raised over the telephone.

24 October 2004 Mr C wrote to Officer 2 and acknowledged Officer 1's reply. He did not consider all his points had been addressed, and enclosed 29 points that he wanted to be addressed. He stated

again that the outcome he wanted from the CRC was 'for the social work managers to explain their actions'.

5 November 2004 Officer 2 replied to Mr C and wrote:
'Can I please clarify that your letter does in fact state your position with a view to taking a complaint to the Social Work Complaints Review Committee. I note that you do not specifically ask for that, only for an explanation on the position from Social Work Managers?

Meantime, assuming that that would indeed be your intention, I have asked the Interim Director of Social Work to comment.'

6 January 2005 Mr C wrote to Officer 2 expressing concern at not hearing anything further about the CRC. He also asked for information under Freedom of Information legislation.

11 January 2005 Officer 2 responded and apologised that he had not identified a date for the CRC before Christmas, but it had taken time to consult the members. He had four dates set aside in February 2005, and he 'simply needed confirmation of details from the Social Work Department that the case papers are ready'.

17 January 2005 Mr C replied and stated that as the dates suggested started in less than a fortnight, he did not consider them to be acceptable. said that 'I have been asked to outline my position with regard to my complaint and did so months ago. I have had no response from yourself or the social work department, hence my desire for information under the Freedom of Information Act. recall being told that I would be given an outline of the social work position before being asked to attend any meeting. I do not have this and wonder if this promise is still valid.'

He also said 'As I understand the complaints procedure it is a review committee and as such I expected it might consider

points raised and attempt mutual understanding.'

He closed the letter by stating 'I will not be railroaded into attending a review before I have all the facts and pertinent information. If you cannot manage to do this then I will not attend a review.'

- 18 March 2005 Mr C wrote to Officer 2 to inform him that 40 working days had passed without having a response from the Council to his request for information.
- 4 April 2005 Officer 1 replied to Mr C's letter of 18 March 2005 and provided relevant documentation.
- 13 April 2005 Mr C rang the Client Services and Complaints Office, and asked why it had been suggested that he did not want a CRC.
- 19 April 2005 Officer 1 replied and explained that the Council had assumed from Mr C's letter of 17 January 2005, that he did not want to proceed to a CRC until he had been provided with all the information from his personal files in order to present his case. Officer 1 said he would ask Officer 2 to set a date for a CRC, and confirmed that Mr C would be sent a copy of the Social Work Department's response at least five days prior to the CRC hearing.
- 16 May 2005 Officer 2 sent Mr C an email, and confirmed the CRC would take place on 1 June 2005. Mr C advised that he would prefer to attend on a Friday, and so that date was not convenient. Officer 2 proposed another date, Friday 29 June 2005, which Mr C also declined.
- 8 July 2005 The Council wrote to Mr C and suggested Friday 2 September 2005 as a possible date for the CRC.
- 18 July 2005 Mr C emailed Officer 2 and declined a further date proposed by

the Council, but stated that he could attend any time before 21 August 2005, including any evening or weekend. Officer 2 acknowledged this email the same day.

3 August 2005 Mr C sent an email to Officer 2. He complained that he still did not have any communication regarding any date for the CRC, and suggested that he would make a written submission for the CRC to consider instead of attending a hearing.

4 August 2005 Mr C and Officer 2 exchanged a number of emails about the merits of Mr C lodging a written submission instead of attending the hearing. Mr C also requested a copy of the written report prepared by the Social Work Department for the CRC before he wrote his submission.

24 August 2005 Officer 2 wrote to Mr C, and proposed a revised date of Thursday 29 September 2005.

9. Mr C subsequently exchanged a number of emails with the Council with regards to his request for a copy of the Social Work Department's 'written submissions'. Mr C wrote a letter addressed to the CRC on 28 September 2005, the day before the CRC was due to take place, and requested that the hearing be adjourned to a future date. He said that he had only had five days to consider the Social Work Department's written report, and, therefore, had not had the opportunity to prepare a response that he was satisfied with, but enclosed it nonetheless. On 29 September 2005, the CRC members decided not to adjourn the hearing, but proceeded to consider Mr C's complaint. The CRC issued their report on 25 October 2005 with their findings and decision. They did not uphold Mr C's complaint.

Details obtained from the Council

10. I wrote to the Council and asked them for details of the dates on which they had proposed to hold the CRC and the reason that no earlier dates had been agreed upon. The Council's reply stated:

'When [Mr C] wrote to [Officer 2] on 15 June 2004, he was still in negotiation with the Health and Social Care Department [formerly the Social Work

Department]. [Mr C] was in regular contact with the Complaints Office from June to July 2004. [Officer 1], Director of Social Work (interim), wrote to [Mr C] asking him to consider a meeting on either 26 or 27 July to try and resolve matters. [Officer 1] recognised [Mr C's] right to request a Complaints Review Committee notwithstanding the outcome of the meeting with Council representatives in July. [Mr C] declined the meeting but asked for several points to be answered before proceeding to a Complaints Review Committee.

Information was required from a number of sources to answer these points. When it was collated, a letter was sent to [Mr C] dated 8 September 2004 from [Officer 1], Director of Social Work (interim). This letter sought to answer all [Mr C's] outstanding issues. He was advised to proceed to a Complaints Review Committee or to a Judicial Review if he remained dissatisfied.

On 24 October 2004 [Mr C] wrote to [Officer 2] requesting a Complaints Review Committee. These papers were faxed to the Client Services and Complaints Officer, [Officer 3], who requested a report from an investigating Officer on 12 November 2004. [Officer 2] requested dates from the Client Services and Complaints Officer in an email dated 24 November 2004. [Officer 3] sought legal advice on 26 November 2004 [on whether Mr C was able to refer a complaint on behalf of a relative of his wife's.]

A file note of 25 November written by [Officer 3], Client Services and Complaints Officer, confirms that dates suggested for the Complaints Review Committee were January 10, 17, 24; and February 1, 8, 11, 14, 15. She had discussions with the investigating officers to see which dates they could make. Following this a memo was sent to [Officer 2] dated 16 December suggesting dates on 24 January and 1, 8, 9, 11 and 15 February 2005.

In a letter dated 17 January 2005 to [Officer 2], [Mr C] confirmed that he did not wish to progress to a Complaints Review Committee until his request for access to files under the Data Protection Act 1998 had been agreed. A letter to [Mr C] dated 23 March confirmed that the information was available. Negotiations on dates for a Review Committee restarted in April.

A memo went from [Officer 3] to [Officer 2] dated 19 April 2005 offering three

dates in June for a Complaints Review Committee. It had always been [Officer 3's] understanding that [Mr C] wanted to see information under Data Protection release before proceeding to a Complaints Review Committee. An email, dated 16 May, from [Officer 2] confirmed the date as 1 June 2005.

[Mr C] advised that he would prefer Fridays so June 1 was not suitable. The Complaints Officer resumed negotiations with [Officer 2] about dates on 30 May 2005, suggesting 29 June. [Mr C] declined this date.

No dates were offered over the summer. [Officer 3] was on sick leave and this meant that the Complaints Review Committee dates were not pursued. When she returned to work she suggested further dates on 27, 28 and 29 September. The 29 September date was agreed.'

11. I asked Officer 2 why it was not possible to arrange the CRC within the time limit stipulated by the Directions. His reply included the following:

'I have on file a memo of 19 July indicating that the Department was offering [Mr C] a meeting to resolve any outstanding issues. There was nothing to say at the time, as became clear at the hearing, that he had refused the request.

[Mr C] appeared to have been given a very full and detailed response in the Interim Director's letter of 8 September [and nothing further was heard from him] until his letter of 24 October sought further information on (alleged) factual and procedural discrepancies/unanswered questions and disputed legal points. That was referred to the Department for direct response as it appeared to be a reply to the Interim Director's letter. Correspondence, much of it by email, continued until January 2005, when [Mr C] submitted a further request for information under the Freedom of Information Act.'

During this, this office continued to attempt to identify a suitable date for a hearing. I believe that 29 September 2005 was one of the fourth series of dates under consideration. I agree that [Mr C] did not dismiss any of the earlier dates.'

12. Officer 2 also advised me that he did not keep a record of telephone calls exchanged in respect to this case.

13. I asked the Council for details of the systems that the Social Work Department had in place for logging and monitoring formal complaints. They replied:

'The Complaints Office uses a database for logging complaints. A file is made up for each complainant. Since August 2005 a new and more robust system for monitoring progress of unresolved complaints has been introduced. Reminders are sent to investigating officers within a fortnight of the complaint being registered and weekly thereafter. A new filing system was introduced from 24 October requiring case notes to be typed which log contacts to the Client Service and Complaints Officer. The office had been understaffed due to staff illness for a considerable period of time during the past year.'

14. Mr C was provided with copies of the correspondence exchanged with the Council, and told me that he had a number of comments to make about the documents. He wrote these out in a letter dated 13 February 2006, and I have studied these carefully. He considered that the Council had attempted to cover up the fact that they had deliberately delayed his CRC.

Conclusion

15. Under the Council's complaints procedures, a request for a CRC is the final stage of the Social Work Departments complaints procedure. If a complainant remains dissatisfied with the Council's substantive written response to their complaint, the complainant has 28 days to request a CRC. In this case, although Mr C and the Council had exchanged many letters in respect to his concerns, they were still in negotiation about who had responsibility for paying for the social care of Mrs C's uncle, and the Council responded to the fresh points that Mr C raised in each of his letters.

16. I find from the contents of Mr C's letters to the Council dated 15 June 2004 and 17 January 2005 and from his repeated requests to see the written report, that Mr C did not understand the function of a CRC, or the procedure that it involved. According to the guidelines contained in the Guidance, the 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.' There is no provision within the CRC procedures for a complainant to have the opportunity to respond to the Social Work Department's response to the complaint, other than at the hearing. I consider that the Council failed to adequately manage Mr C's expectations about the outcome of the CRC, or what it could achieve on his behalf.

17. I consider the Council failed to tell Mr C of the purpose of the CRC, failed to clarify the grounds of his complaint, and failed to explain the procedures at the earliest opportunity, or when he requested such information; they further failed to correct his expectations of what the CRC could achieve for him, despite the fact that it was clear from his correspondence that he misunderstood its role. I am critical of this.

18. In addition, the Council should have been firmer that Mr C's request was premature and that they would not arrange a CRC until all other reasonable avenues had been explored.

19. The Directions and the Council's own procedures made it clear that a CRC should be arranged quickly after a request for a review has been made; the Directions stipulate that a CRC should make recommendations to the Social Work Committee 'as soon as reasonably practical and within 56 days after the complainer has requested reference to it', and the Council's 'Procedure for consideration of client complaint' states that the Council 'will seek to hold this within 28 days of receipt of representations'. Both set down the fact that if either the Council or the complainer wishes to extend the period for completing any of the procedures, this must be agreed by both the Council and the complainer.

20. Mr C requested the CRC on 15 June 2004, and it was not until 20 July 2004 that Officer 1 proposed a meeting to try and address the outstanding issues. He advised Mr C that the meeting he proposed would not affect his right of appeal, and wrote 'You may wish to consider whether to proceed with this prior to, or following, our meeting'. The Council had not taken any steps to arrange a CRC between these times, and did not tell him that they were postponing his CRC until other means of resolving his issues had been explored. They also failed to obtain his agreement to do this as set down by the Directions. I find this to be evidence of maladministration.

21. Although I note that efforts were made to arrange a date for the CRC between receiving Mr C letters of 24 October 2004 and 17 January 2005, it is clear that there were no procedures in place to ensure that the CRC was arranged within the time limits stipulated by the Directions and the Council's own written procedures. As a result, the Council failed to arrange, or at least finalise, a date for CRC to take place between 24 October 2004 and 17 January 2005.

22. I find it reasonable for the Council to have interpreted Mr C's letter of 17 January 2005 as they did. He wrote that 'I will not be railroaded into attending a review before I have all the facts and pertinent information. If you cannot manage to do this then I will not attend a review', and I consider it appropriate for the Council to wait until he had the information he required before proceeding to arrange the CRC.

23. In my opinion, it would have been a matter of good practice for the Council to confirm this in writing, and for them to ask Mr C to confirm when he considered he was in a position to attend the CRC. As it was, the Council failed to put any procedure in place to ascertain, at what stage Mr C considered he had the relevant information he had requested, in order to recommence arrangements to set a date for the CRC that was suitable for all the parties.

24. It was not until Mr C telephoned the Council on 13 April 2005 that the Council began to arrange the CRC hearing again. I am critical of this, as it would have been a basic step for the Council to have taken, and although this accounted for only a short delay, it gave Mr C the impression that the Council were not taking his request for a CRC seriously.

25. After April 2005, I find that there were a number of different factors that led to the CRC being delayed until 29 September 2005. These include Mr C's request for the hearing to be scheduled on a Friday and Officer 3 being on sick leave.

26. I do not share Mr C's belief that the Council deliberately delayed the CRC, but I do consider that there was undue delay in arranging the CRC. I uphold the complaint.

Recommendation

27. The Ombudsman recommends that the Council provide complainants with more detailed written information about what to expect when a complaint is referred to a CRC, clarify at what stage a complaint can be referred, and what procedures are followed prior to the CRC taking place.

28. The Ombudsman commends the Health and Social Care Department on introducing a new and more robust system for monitoring the progress of unresolved complaints in August 2005, and the new filing system in October 2005. The Ombudsman also acknowledges the difficulties experienced by the Council (and other Councils) in trying to convene CRC in circumstances where diaries can be difficult to co-ordinate. She is also aware that the process generally is likely to change.

29. In the meantime, however, in this case there were other problems and the Ombudsman recommends that the Council review their processes for arranging CRC's to ensure that they are held within the time limits set down by the Directions and their own procedures and that complainants are given appropriate information about what will happen and what is expected of them. I am pleased to note that the Council have already told me they intend to review the way they log, acknowledge and track progress with references to CRCs.

30. The Ombudsman also recommends that the Council make a payment to Mr C of £200 for the unnecessary delay in arranging the CRC. Again, the Council have accepted the recommendation.

31. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

19 December 2006

Annex 1

Explanation of abbreviations used

The Council	The City of Edinburgh Council
Mr C	The complainant
Officer 1	The Council's Director of Social Work (interim)
Officer 2	Council Officer acting on behalf of the Council Secretary, Committee Services
Officer 3	Client Services and Complaints Officer of the Social Work Department
CRC	Social Work Complaints Review Committee
The Directions	Social Work (Representations Procedure) (Scotland) Directions 1996
The Guidance	The Scottish Executive's Social Work Services Group's circular 5/1996, which gives guidance on the operation of the Directions.
Social Work Department	Now known as the Health and Social Care Department

Legislative Policy and Information

The legislative framework for the creation of a CRC is set out in the Social Work (Representation Procedures) (Scotland) Directions 1996 (the Directions) as the final stage of a comprehensive complaints system. The role of a CRC is to examine objectively and independently the facts as presented by the complainant and by the local authority, then to make a recommendation to the appropriate local authority social work committee. The detailed guidance on the operation of CRC's is contained in the Scottish Executive's Social Work Services Group's circular 5/1996. This sets out the following guidance at paragraph 2:

'Complaints Review Committee

Complaints procedures should involve 3 stages. In the first informal problem solving stage, every attempt should be made to mediate and resolve the complaint. In the second stage unresolved complaints should be formally recorded and investigated by specially designated staff. Where a complaint is upheld, authorities should endeavour to resolve the issue amicably. In the final stage 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. This requires some element of objectivity and independence in the membership of CRCs. Complaints should only be referred to the CRC when all avenues of redress have been explored.'

The Social Work (Representations Procedure) Scotland Directions 1996 provides:

'10(4) that the review committee shall make recommendations in writing to the social work committee or other responsible committee of the local authority as soon as is reasonably practical and within 56 days after the complainer has requested reference to it;

10(7) that where a local authority or a complainer wishes to extend the period for completing any of the above procedures, this must be agreed by both the local authority and the complainer'.

The Council's procedures

The Council provided me with a copy of their relevant complaints procedure, 'Complaints Procedure for Service Users' dated December 1992. This included:

'12.1 A letter of resolution is sent to the complainant after an investigation or a meeting which is held to resolve a complaint. The complainant is asked to formally respond to the letter. [...]

[...]

13.2 For the Review Committee to be convened, notice in writing must be lodged with the Depute Chief Executive within 28 days of receiving a response in writing from the Social Work Department to the substance of representations. The written notice may be lodged by the complainant or their advocate.

13.3 On behalf of the Depute Chief Executive, the Council Secretary (Committee Services Division, Department of Corporate Services) will inform the Director of Social Work that a review has been requested.

Appendix 9, 2.3 A mutually agreeable date for the review will be agreed with the complainer and his/her representative, if any. The local authority will seek to hold this within 28 days of receipt of representations.'

The Social Work (Representations Procedure) (Scotland) Directions 1996, Direction 10 states:

'Local authorities shall ensure (...) that the procedure includes provision to the following effects:

- that an acknowledgement in writing that a representation has been received and is being considered shall be issued within five days after receipt of representation;
- that a response in writing to the substance of any representations shall be issued to the complainer as soon as reasonably practicable and within 28 days after receipt of representations;
- that if a complainer within 28 days of receiving a response in writing to the substance of his representations informs the local authority that he is not satisfied with the response and wishes matters to be referred to a

review committee the matter will be referred forthwith to a review committee for review;

- that the review committee shall make recommendations in writing to the social work committee or other responsible committee of the local authority as soon as reasonably practical and within 56 days after the complainer has requested reference to it;
- that the local authority shall as soon as is reasonably practical and within 42 days of receiving the review committee's recommendations decide what action to take and inform the complainer in writing of that decision, and where a review committee recommendation has been disregarded, the reasons for doing so;
- that where a local authority disregards a recommendation of the complaints review committee, the reason for the decision are given to the complainer in writing accompanied by any relevant advice and also appear in full in the minutes of the relevant meeting of the responsible committee of the local authority and are made available for public scrutiny;
- that where a local authority or a complainer wishes to extend the period for completing any of the above procedures, this must be agreed by both the local authority and the complainer.'