

Scottish Parliament Region: North East Scotland

Case 200500042: The Scottish Commission for the Regulation of Care

Summary of Investigation

Category

Scottish Executive and devolved administration: Commissioners and Ombudsmen; Complaints handling

Overview

A man (Mr C) complained that the Scottish Commission for the Regulation of Care (the Care Commission) did not adequately investigate his concerns that his mother (Mrs A) had money stolen from her while she was resident in a care home (the Home).

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Care Commission did not consider Mr C's evidence and believed everything staff at the Home said to them without investigation (*partially upheld*); and
- (b) the Care Commission did not make proper enquiries, in particular, that they did not seek relevant information from the Police, the lawyer who holds Mrs A's power of attorney and Mrs A (*not upheld*).

Redress and recommendation

The Ombudsman recommends that the Care Commission ensure both sides in a complaint receive the same information about their findings and that it be clarified in training and guidance that any decision letter must fully reflect the investigation undertaken and communicate this clearly to the complainant.

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

Main Investigation Report

Introduction

1. Mr C's mother (Mrs A) moved from London to a nursing home in Edinburgh (the Home) in 2002 and was resident in the Home until 2004. Mr C has said that while resident substantial sums of money were withdrawn from Mrs A's bank and Visa accounts.

2. Mr C's daughter originally complained in 2003 but the Scottish Commission for the Regulation of Care (the Care Commission) decided not to investigate pending the results of a Police investigation. In June 2004, the Police confirmed to the Care Commission that the investigation would end soon and that, although they should not visit the Home within the next week, after this date any visit would not interfere with their investigation. The Care Commission met with Mr C and it was agreed that they would investigate three points: that Mr C had been prevented from seeing his mother's bank statements; Mrs A was not in receipt of her personal allowance to which she was entitled; and the Home had lied to Mr C about his mother's incapacity status. The Care Commission investigated and, after a letter of resolution dated 21 July 2004 was not accepted, a final report was issued on 1 November 2004.

3. In November 2004 the Care Commission also investigated concerns raised by Mr C's MP that the Home might not have systems in place to ensure as far as possible the safe storage and administration of resident finances. This complaint was also not upheld.

4. In May 2005 Mr C asked for a review of his complaints. The reviewing officer recommended that further investigation be undertaken. The Care Commission also agreed to investigate a further complaint by Mr C about concerns that his mother had money removed from her bank and Visa accounts. After the reinvestigation was completed the Care Commission wrote to Mr C on 21 December 2005 and partially upheld his complaint about his mother's incapacity status. The Care Commission also wrote separately to the Home and made six recommendations for improvement. These referred to the need for improved security in the management and monitoring of finances, the introduction of a mail log and the need for Care Plans and Care Records to reflect information about the management of finances and the wishes of the residents about care needs.

5. The complaints from Mr C which I have investigated are that:
 - (a) the Care Commission did not consider the evidence and believed everything staff at the Home said to them without investigation; and
 - (b) the Care Commission did not make proper enquiries, in particular, that they did not seek relevant information from the Police, the lawyer who holds Mrs A's power of attorney and Mrs A.

Investigation

6. In investigating this complaint I obtained all the documentation held in the Care Commission's investigation files, reviewed information provided by Mr C and interviewed Mr C about his concerns.

7. 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 Care Commission were given an opportunity to comment on a draft of this report.

(a) The Care Commission did not consider Mr C's evidence and believed everything staff at the Home said to them without investigation

8. In the notes of the initial interview with Mr C, Mr C gave details of two specific incidents which concerned him in relation to his complaint that his mother had money stolen from her while resident at the home. At the date of the interview, the Police investigation had not yet concluded and Mr C agreed that the matters which should be investigated were the three points in paragraph 2.

9. In investigating Mr C's concerns, two Care Commission officers made an unannounced visit to the Home, spoke to the Manager and the Home Matron and examined documentation. This included a letter from Mrs A's GP, reference to an assessment by a consultant psychiatrist and documents describing the involvement of a local advocacy group. An officer spoke to a financial officer at the London Borough Council which retained responsibility for Mrs A's funding.

10. The report upheld none of Mr C's concerns although it was noted that Mr C had been wrongly informed of his mother's status and should have been informed Mrs A was incapax with regard to medical and not financial matters. However, the Care Commission concluded that this was because the Home had misunderstood the implications of an assessment and that Mr C had not been misinformed deliberately. The report also said that there had been no

deliberate attempt to prevent Mr C from seeing financial information but that Mrs A had been inconsistent in expressing her wishes about this and that the advocacy group had been appropriately brought in to help. Following the intervention of the advocacy group it had been agreed in April 2003 that Mr C could access the financial records held by the Home.¹

11. In the investigation of the MP's concerns (see paragraph 3) a second unannounced visit was made by one of the officers in paragraph 9. The officer examined financial records and spoke to the Home Matron and Financial Administrator. Her report listed the systems in place for monitoring various financial matters including recording personal allowances and details of resident property held in the safe. As a result of the visit, the Home made changes to procedures surrounding the opening of mail but the complaint was not upheld.

12. In May 2005 the Care Commission agreed to review their initial investigation. Mr C wrote a detailed letter to them of his concerns, provided a copy of a letter which contained a time line of the events and also supplied photocopies of bank statements and a letter from Mrs A's solicitor and GP dealing with the issue of her incapacity.

13. At the start of the review a series of meetings were held at the Care Commission, the notes of these show the Care Commission were concerned that they did not have substantive evidence to justify their conclusions in the previous investigations. They detailed a number of general investigation issues and issues for each head of complaint which would need clarification. As a result the Care Commission agreed to hold a full reinvestigation.

14. In the course of this reinvestigation the London Borough Council which remained responsible for Mrs A's funding and the Police were contacted. Three visits were made to the Home. These were announced visits and involved detailed examination of documentation which included correspondence with a Bank and Mr C's solicitors, Mrs A's care plan and documentation relating to her incapacity status.² The Care Commission's financial adviser was involved in this reinvestigation.

¹ In September 2003 a solicitor was granted power of attorney over Mrs A's financial affairs.

² A full list was included in the letter to Mr C of 21 December 2005.

15. Following the reinvestigation, a third complaint report was produced. This report did not uphold most of Mr C's complaints and largely upheld the decisions of previous reports. However, the report did recommend partially upholding the complaint that Mr C had been told his mother was fully incapax (see paragraph 10). The report agreed with the initial investigation that this had not been deliberate and noted that the Home had put in place training for appropriate staff on incapacity. However, the reinvestigation had showed that care planning when Mrs A entered the home was poor and no change had been made to Mrs A's care plan between January and December 2002³. Although the December plan was much improved, the report said there were no notes in the updated Care Plan about Mrs A's financial needs/abilities and no record in the daily notes to indicate she did not wish Mr C to have access to her bank accounts although episodes of confusion and distress were noted.

16. The report also detailed the contact between the Police and the Care Commission during the investigation and noted that according to the constable who investigated this matter: 'the procedures relating to residents' financial accounts, in place at [the Home] were not sufficient, stating no records were kept in respect of when and for what purpose staff were given access to residents' bank cards etc. and that general security of these items was not adequate'.

17. The report then described the investigation by the Care Commission's financial adviser and made six recommendations for improvement. These largely related to the care of residents' finances and listed the relevant national care standards. The recommendations also referred to a need for changes in Care Plans and Care Records to include the recording of management of finances and residents' wishes about care needs and, in particular, family involvement. The report concluded by dealing with the general investigation issues raised by the review. This section of the report said that not all Police contact had been noted by Care Commission officers, that no risk assessment was undertaken, there was no reference in the initial report to the lax management of bank cards at the start of Mrs A's residency or to the fact that the new owners had issued a policy about this in July 2003. The report also stated that during the reinvestigation no certificate of incapacity was available at the Home but only a copy of a letter sent to solicitors referring to this, no copy of

³ The report also noted a change in the ownership of the Home occurred in 2002 and this did bring about improvements. Ownership changed in May 2002.

the funding agreement was held by the Home and information on this was sketchy.⁴

18. Following the completion of the report, a letter was sent to Mr C with the decision of the Care Commission on the reinvestigation dated 21 December 2005. This summarised the report and followed with the recommendation to only partially uphold one of Mr C's complaints. The letter did not detail the recommendations to the Home or list the details of the financial adviser's investigations. It concluded by saying:

'The Care Commission is satisfied that appropriate action was taken by the Home in endeavouring to ensure proper provision for the welfare needs of your mother. However, a number of recommendations have been made in relation to care planning, record management and financial management, which the Home will be expected to implement and which will be monitored through future inspection'.

19. It is notable that the letter stated in response to Mr C's complaint that money had been stolen: 'The decision of [Police] was that no further action should be taken. Their enquiries laid no blame on [the Home]. However, the Care Commission investigation found several areas in which record-keeping and financial procedures could be improved'.

20. A letter from Mr C to the Home of 11 January 2006 dealt with the financial investigation and recommendations in detail. It also referred to the concerns of the Police about procedures at the Home.

21. In response to my questions, the Care Commission said that a more appropriate form of words should have been used in the letter to Mr C rather than 'no blame' to reflect the fact that no action was being taken as a result of the Police investigation. They also said that they recognised that specialist advice such as that of the financial adviser in the reinvestigation should be routinely considered. As a result of the reinvestigation of this complaint, they confirmed they had amended their complaints procedure operational guidance and a complaints tool to remind officers of the need to consider if such advice was required.

⁴ The report findings on this point were based on direct contact with the London Borough Council.

(a) Conclusion

22. The Care Commission's own review of the previous two investigations in to this matter was critical of a number of aspects of those investigations. This included the handling of evidence. I have seen the evidence used and report produced in the reinvestigation and am satisfied that this did consider Mr C's evidence and was a thorough investigation of the matters raised. I am also satisfied that the Care Commission have improved procedures to ensure specialist advice is obtained where required.

23. However, I am concerned that the letter of 21 December 2005 to Mr C with their decision on the complaint was different from that sent to the Home and, in particular, did not inform Mr C of the concerns they had about the previous investigations and what they had done to remedy this or of the investigation of the financial issues and what the recommendations were. Mr C was, therefore, left without a full picture of the reinvestigation or of what action the Home was to take.

24. Additionally, while the Care Commission have accepted that a more appropriate wording should have been used to refer to the Police investigation other than 'no blame', it is notable that this initial use of words directly contradicts their own complaint report and the letter to the Home both of which directly reflect the Police concerns about inadequate procedures at the Home. The Care Commission have not said that they would have communicated this to Mr C but only that they would have communicated no action had been taken by the Police. I consider that the Care Commission should have communicated the same information to Mr C and to the Home and that there was no apparent reason to withhold the concerns the Police had made known to them. In conclusion, although the reinvestigation was thorough, I consider that the Care Commission failed to explain this to Mr C and failed to fully explain and communicate their findings and recommendations. I, therefore, partially uphold this complaint.

(a) Recommendation

25. The Ombudsman recommends that the Care Commission ensure both sides in a complaint receive the same information about their findings and that it be clarified in training and guidance that any decision letter must fully reflect the investigation undertaken and communicate this clearly to the complainant.

(b) The Care Commission did not make proper enquiries, in particular,

that they did not seek relevant information from the Police, the lawyer who holds Mrs A's power of attorney and Mrs A

26. In the issues raised in the review of the initial investigation (paragraph 13), the Care Commission noted a number of investigation issues surrounding contact with the Police. They were concerned that contact with the Police was not referred to in previous reports and that there was no documentation explaining why the Care Commission had decided not to proceed until the Police enquiries were completed. There was no evidence of a risk assessment as to whether the incidents were likely to reoccur and it was also noted that the initial report appeared inconsistent in places. The review also highlighted the need for the Care Commission to contact the London Borough Council to clarify Mrs A's funding.

27. The review did not refer to any need to contact Mrs A or her solicitors. Following Mr C's concerns, a solicitor was granted power of attorney over her financial matters in September 2003.

28. The list of documents considered in the visits to the Home during the third investigation did include reference to communication between Mr C's solicitors and the Home and said they had also seen documentation relating to Incapacity and the power of attorney. As stated above, they concluded the report by saying that the Home held no copies of the medical incapacity application or confirmation.

(b) Conclusion

29. As stated in paragraph 22, the reinvestigation of this complaint was thorough. In particular, the review of previous investigations highlighted areas where more evidence was needed and the final complaint report showed that, where possible, this had been obtained. As can be seen from paragraph 16, the Police had been contacted appropriately as part of this reinvestigation, although I have already criticised the failure to communicate this to Mr C.

30. Neither Mrs A or her solicitors were contacted directly at any point. Having reviewed the complaint and the evidence it is clear that Mr C provided substantial information about his concerns and also copies of bank records. I have seen notes made during the reinvestigation which show these were considered in detail. The review did not highlight the need to contact Mrs A or her solicitors for additional evidence and I see no need to question this decision. I, therefore, do not uphold this aspect of the complaint.

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

27 March 2007

Explanation of abbreviations used

Mr C	The complainant
Mrs A	The complainant's mother
The Home	Care Home where Mrs A was resident
The Care Commission	The Scottish Commission for the Regulation of Care