

Scottish Parliament Region: Mid Scotland and Fife

Case 200500879: Fife Council

Summary of Investigation

Category

Local government

Overview

The complainant (Mr C) raised concerns about Fife Council (the Council)'s handling of his request for direct payments to enable him to purchase help with domestic tasks in his home.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) delayed placing Mr C on the home care waiting list (*upheld*);
- (b) failed to provide Mr C with information on the progress of his request for direct payments (*upheld*); and
- (c) delayed in responding to Mr C's complaint to the Chief Executive about direct payments (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) provide Mr C with a written apology for the delay in processing his request for direct payments and for failing to provide Mr C with information on the progress of his request;
- (ii) pay Mr C direct payments for the period for which he was eligible i.e. 12 November 2004 to 6 December 2005;
- (iii) devise a detailed procedure for the handling of direct payment requests that takes into account the legislative requirements and guidance. The procedure should clearly specify the role of the Social Work, Home Care and Direct Payment Services in the handling of direct payment requests and require that each step of the process be documented and held on file. The procedure should also include the requirement that all forms, which are part of the process, are completed, signed and dated and that applicants for direct payments or homecare are informed in writing of the outcome of their application and the reasons for the decision; and

- (iv) devise a system to ensure that, in future, complaints are dealt with in a timely manner.

The Council have accepted the recommendations.

Main Investigation Report

Introduction

1. On 28 June 2005 the Ombudsman received a complaint from a member of the public (Mr C) against Fife Council (the Council) regarding the Council's handling of Mr C's request for direct payments to enable him to purchase help with domestic tasks.

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

- (a) delayed placing Mr C on the home care waiting list;
- (b) failed to provide Mr C with information on the progress of his request for direct payments; and
- (c) delayed in responding to Mr C's complaint to the Chief Executive about direct payments.

Investigation

3. My investigation of this complaint involved the examination of the correspondence provided by Mr C, making enquiries of the Council and assessing their responses and documentary evidence provided (including the Council complaints procedure; guide to obtaining Community Care services from Fife Social Work Services; Social Work Services Policy on Eligibility Criteria (Adults with Disability and Older People) and their Direct Payments Instead of Home Care procedure). I also referred to the Scottish Executive 'Social Work (Scotland) Act 1968: Sections 12B and C: Direct Payments Policy and Practice Guidance' (the Guidance) and their 'A Guide to receiving Direct Payments'.

4. I have outlined my investigation and findings of fact for the complaints below. Although I have not included every detail investigated in this report 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.

Background

5. Mr C is 56 years old, disabled and lives on his own. At the time of this complaint he received help with his shopping and housework from his two sisters who live locally. When making his complaint, Mr C stated that in November 2004 he was allocated a Social Worker (Officer 1) by the Council and in December 2004 he was assessed for domestic help by the Home Care Manager (Officer 2). Mr C said that he had understood that the assessment

and report on his case would be put before the Direct Payments Section in January/February 2005 but that he was never provided with a formal decision on his application.

6. In March 2005 Mr C's MSP started to correspond with the Council on his behalf and on 14 June 2005 Mr C was visited by the Home Care Services Team Leader (Officer 3), who, Mr C claims, advised him that he had to be in receipt of Home Care from the Council before she could decide whether he could receive direct payments instead of home care. Mr C also indicated that he was advised that there was a waiting list for home care and that only when he reached the top of that list could he be considered for direct payments. Mr C stated that he was advised by Officer 3 that his name would be added to the home care waiting list that day. On 16 June 2005 Mr C wrote to his MSP to ask her to pass his complaint about direct payments to the Ombudsman's office.

Legislative Requirements

7. The Guidance sets out the Executive's view of how local authorities can make the most of the powers given to them by Sections 12B and C of the 1968 Act and advises them how to implement these powers. It explains that direct payments 'are a major step forward for community care and present an opportunity to bring about improvements in the quality of life of people who manage their own services'. It states that from 1 April 2004 local authorities have a duty to offer all community care groups (with the exception of certain groups of people who are excluded by regulations) direct payments instead of arranging community care services for them. It explains that 'a direct payment is a cash payment made by a local authority to an individual whom it has assessed as needing community care services. The local authority makes the payment instead of arranging the services it has assessed the person as needing. The person then uses the payment to secure for him or herself the relevant services.'

8. The Guidance goes on to explain 'the needs assessment process will be the same regardless of whether the person being assessed is likely to receive services or direct payments ... In particular, it is important that needs-led focus of the assessment is retained and that the individual ... should be involved throughout the assessment process. The greater involvement the individual has in the process and in the decisions reached about direct payments, the more likely it is that the direct payments will be a success.'

9. The Scottish Executive website states that people who are currently eligible to receive direct payments are disabled adults and children and those who are over 65 years of age who are assessed as needing care services.

**(a) The Council delayed placing Mr C on the home care waiting list; and
(b) failed to provide Mr C with adequate information on the progress of his request for direct payments**

10. In their responses to the Ombudsman's office dated 29 November 2005 and 8 March 2006, the Council advised that Mr C first contacted their Direct Payments Services (DPS) regarding assistance with his housework in August 2004 and that a member of staff visited Mr C on 16 August 2004 to discuss his request. They stated that Mr C's request was referred to the Council's Social Work Community Care Team on 16 September 2004 and the case was allocated to Officer 1 on 28 October 2004. They said that on 12 November 2004 Officer 1 carried out a Single Shared Assessment on Mr C and concluded that Mr C was fairly independent and should be encouraged to remain so. They stated that Officer 1 identified that Mr C had a need for ongoing assistance with housework. They stated that Mr C was offered immediate domestic support from the Council's Home Care Services at his home visit by Officer 2 on 12 November 2004. They said that Mr C refused this offer and requested direct payments instead. They advised that it was then agreed that direct payments would be considered to meet Mr C's domestic support requirements. The Council provided documentation to support this sequence of events.

11. The documentation provided by the Council noted that during the discussions on 16 August 2004 Mr C was provided with information about direct payments and was advised that the Council did not generally pay relatives for domestic services. It was noted that Mr C wanted an assessment by Community Care and that a referral was made on 23 August 2004. A copy of a DPS Service Enquiry Form for Mr C dated 28 October 2004 stated 'Requesting a Community Care Assessment and a Direct Payment for housework'. The Council also provided a copy of the Single Shared Assessment form dated 12 November 2004 which stated '[Mr C] manages to remain fairly independent at home... He receives support from his family members who stay locally but feels that he would benefit from additional support to help him with his daily living tasks to remain independent'. The agreed outcome of the meeting of 12 November 2004 was noted as 'to look at direct payments to provide assistance with housework tasks' and the action summary, signed by Mr C, as

'referral to Home Care'.

12. The documentation also showed that in Officer 1's referral of Mr C's case to Officer 2 she stated '[Mr C] has requested assistance with housework from Direct Payments after receiving information from the Department of Work and Pensions'. The documentation showed that on 15 November 2004 Officer 2 noted the outcome of the referral as 'sister doing housework at present which he is happy with – NFA home care'.

13. The documentation provided by the Council showed that a re-assessment form relating to the provision of a community alarm for Mr C was completed and signed by Officer 2 on 6 December 2004. It detailed Mr C's own signed account of his circumstances regarding Direct Payments as 'Direct payments for housework already in system and waiting to hear results'.

14. On 31 March 2005 Mr C's MSP made an enquiry of the Council regarding Mr C's community alarm and his request for direct payments. The Council's records included detailed notes of a telephone call from Officer 2 to Mr C on 13 April 2005 which stated that Mr C 'does not understand why he was refused Direct Payments as he thought he had a choice, either home care/direct payments. I have explained that [Officer 1] will know why he was refused Direct Payments and I will ask her to discuss this with him. Once this discussion has taken place and he decides he wants home care to carry out his domestic tasks I will call at his home and arrange this'.

15. The Council records show that Officer 1 visited Mr C on 18 April 2005 when Mr C confirmed that he did not want Home Care to provide his domestic support. Officer 1 said to Mr C that the matter of direct payment was still being pursued.

16. On 28 April 2005 Officer 1 wrote to Mr C and said that his request for Direct Payments to assist with domestic tasks had been turned down at that time because Home Care Services were dealing with personal care as a priority and there was a waiting list for domestic care. She explained 'this does not mean that you will never receive it but it will have to be reconsidered at some time in the future.' I understand from my enquiries that Officer 1 had left the situation to be managed by Direct Payments and Home Care.

17. The Council said that on 16 May 2005 Officer 1 contacted the Direct

Payments Support Officer (Officer 5) to find out how Mr C's referral was progressing – given that the original email had stated that once priorities had changed, it may be that Mr C would be considered for a direct payment. The Council said that Officer 1 received a response from Officer 5 saying that Officer 1 should have informed Mr C that the service was not going to be provided. The Council said that Officer 1 contacted Officer 5 again to advise that Mr C had been back in contact and the request for direct payment should be pursued. The Council added that Officer 1 understood that Mr C was on a waiting list for housework services to be provided by Home Care, but that this was an interim measure given that they were still awaiting an outcome from the direct payment request.

18. On 19 May 2005 Mr C's MSP forwarded correspondence with Mr C regarding 'the issue of Direct Payment for cleaning' to the Council and asked that Mr C's concerns be addressed.

19. On 31 May 2005 Mr C's MSP wrote to Mr C to confirm that she had been advised by the Council that 'although the social work department had assessed you as eligible to apply for Direct Payment, Direct Payments were unable to allocate you funds for domestic service because they did not have funds available.' She added 'My assistant was informed by Fife Council that the reason you wished to apply for Direct Payment was so that you could employ your sister to perform this for you'. She indicated that this may not be permissible under the Scottish Executive rules but that she would contact [Mr C] again once she had received a full explanation from the Council.

20. On the same day Mr C's MSP also wrote to the Head of Social Services complaining that Mr C had yet to receive a full written explanation of the Council's decision to turn down his request for direct payments.

21. On 14 June 2005 Officer 5 provided a full response to the MSP. She stated 'the Ombudsman's office is not responsible for deciding whether or not someone may have a Direct Payment, instead of home care, rather that rests with the Home Care Service Manager'. She explained that the Home Care Services Manager had advised that Mr C's case was rejected because he was only eligible for home care for domestic tasks, and there was a waiting list for this in Mr C's area. She said Mr C's case was considered to have a low priority and as resources were limited service users considered to be at risk were given priority.

22. Officer 5 claimed that Officer 3 visited Mr C that day and advised him that 'she will put him on a waiting list for Home Care, and when he reaches the top of that list, he can ask for a Direct Payment'. A letter from Officer 3 confirmed that she agreed with Mr C that he would go on the home care waiting list on 15 June 2005. The Council supplied a copy of a Home Care Waiting List Input Sheet dated 15 June 2005 containing Mr C's details.

23. Mr C wrote to the Council on 15 August 2005, indicating that he was not satisfied with the response to his complaint and requesting that the matter be referred to the Chief Executive of the Council. This letter was acknowledged but, as a full reply had not been sent, on 26 September 2005 a further letter was sent to Mr C to apologise for the delay.

24. On 5 October 2005 the Chief Executive of the Council wrote to Mr C. He referred to Officer 5's letter of 14 June 2005 (paragraph 21) and said that in essence the response was correct. He said 'for many years, the Council has operated an Eligibility Criteria that targets our limited resources to those people in greatest need' and that 'people requiring personal care attention are our highest priority and currently 73% of the 30,000 hours we allocate per week are for personal care attention'.

25. The Chief Executive said 'Fife Council is also aware of the benefits of providing low level preventative services including some minimal domestic support. However, within our current resources, those people requiring domestic support only, require to be placed on a waiting list until a slot becomes available in their area. You do not appear to be requesting domestic support from the Home Care Service, but wish a Direct Payment for the Council to enable you to purchase your own domestic support. Had you currently been a Home Care service user, I would have been able to transfer the cost of currently providing this service to you in the form of a Direct Payment. However, as you are not currently a Home Care service user you, therefore, are not eligible for this financial arrangement'.

26. The Council confirmed that Mr C's direct payments request was eventually approved on 31 October 2005 as the necessary finance was available and Mr C was in the top three or four people on the waiting list at that time. The Council provided a copy of a letter to Mr C dated 21 December 2005 which stated that Mr C's direct payments were effective from 6 December 2005.

27. When questioned about why it had taken from 15 November 2004 to 15 June 2005 to add Mr C's name to the home care waiting list, the Council advised '[Mr C] was offered immediate domestic support from the Council's Home Care Service at his home visit by [Officer 2] on 12 November 2004. Mr C refused this. The Home Care Service throughout this episode continued to offer Mr C the option of receiving this service. However, demand continually changes, and by 15 June 2005, the Service had a significant waiting list. The Service Manager, Home Care (Officer 4), in an effort to resolve the issue, offered to fund Mr C's Direct Payment as and when it was allocated on the waiting list'.

28. I later interviewed Officer 4. When questioned on the issue of the apparent delay in providing Mr C with direct payments for his domestic tasks Officer 4 explained that the process was rather confusing as there were three teams involved: the Direct Payments Team, the Home Care Team and the Social Work Community Care Team. He suggested that in Mr C's case there had been a lack of communication between the Social Work and Home Care Teams. Officer 4 was unable to explain why Mr C's name did not appear to have been added to the home care waiting list until 15 June 2005 when Mr C had been advised on 12 November 2004 that his request for direct payments for domestic tasks would be considered, or provide any evidence to suggest that Mr C's name had been added to the list at an earlier date.

(a) Conclusion

29. The Scottish Executive guidance clearly states that local authorities have a duty to offer all eligible community care groups direct payments instead of arranging community care services for them. The documentation shows that as Mr C is disabled he was considered to be eligible for community care services but that he was given a low priority rating. The Council indicated that on 12 November 2004 Mr C was offered immediate domestic support from the Council's Home Care Services but that Mr C refused this offer and requested direct payments instead. The documentation shows the Council then agreed 'to look at direct payments to provide assistance with housework tasks'.

30. The Council explained that applicants for direct payments were placed on the home care waiting list and when they reached the top of that list their request for direct payments was approved if funding was available. The documentation shows that Mr C was added to the Council's home care waiting

list on 15 June 2005 but that this was only as a result of complaints from him and his MSP about the Council's handling of the matter.

31. It is clear from the evidence that it took the Council seven months to add Mr C's name to their home care waiting list. Further, as Mr C was offered immediate domestic support on 12 November 2004, it is evident that there was no waiting list for home care at that time. Mr C's request for direct payments could, therefore, have been processed in November 2004. It is my opinion that there were serious failings in the Council's handling of Mr C's request and that the absence of a clear, documented procedure has contributed to this situation. I, therefore, uphold this complaint.

(a) Recommendation

32. The Ombudsman recommends that the Council provide Mr C with a written apology for their failings in this area and pay him direct payments for the period for which he was eligible i.e. 12 November 2004 to 6 December 2005. She also recommends that the Council devise a detailed procedure for the handling of direct payment requests that takes into account the legislative requirements and guidance. The procedure should clearly specify the role of the Social Work Community Care, Home Care and Direct Payment Services and require that each step of the process be documented and held on file. The procedure should also include the requirement that all forms, which are part of the process, are completed properly, signed and dated.

(b) Conclusion

33. The Scottish Executive's guidance advises that 'the greater involvement the individual has in the process and in the decisions reached about direct payments, the more likely it is that the direct payments will be a success.'

34. From the correspondence provided by the Council it is clear that on 6 December 2004 Mr C believed that his request for direct payments was being considered by the Council and that the Council were aware that this was the case. The correspondence also shows that Mr C first heard that his request for direct payments had been turned down on 13 April 2005 (see paragraph 14). On 28 April 2005 Mr C was sent a letter explaining why his request had been turned down at that time and Mr C's MSP also received a letter of explanation dated 6 May 2005. These letters, however, do not clearly explain the direct payments application process and the information provided in the letters is also contradictory. Only on 14 June 2005, after a further letter of complaint from the

MSP, did the Council provide an explanation of the direct payments process, advise where Mr C's application was within that process and place Mr C on the Home Care waiting list.

35. It is my view that the Council failed to provide Mr C with adequate information on the progress of his request for direct payments and I, therefore, uphold this complaint.

(b) Recommendation

36. The Ombudsman recommends that the Council provide Mr C with a written apology for their failings in this area. She also recommends that the Council ensure that the procedure recommended in paragraph 32 above includes the requirement that applicants for direct payments or home care are informed in writing of the outcome of their application and the reasons for the decision.

(c) The Council delayed in responding to Mr C's complaint to the Chief Executive about Direct Payments

37. In response to my enquiry about timescales for dealing with Mr C's letter of complaint to the Chief Executive dated 15 August 2005 the Council explained that they apologised to Mr C about the delay in their letters of 26 September and 5 October 2005. They said that the matter was initially referred to the Service Manager for Direct Payments and then to Officer 4 for Home Care for comments. They said that there were delays within Social Work in providing comments and that this was brought to the attention of the Head of Service who pursued the matter on 4 October 2005. The Council added that the Council's Adult Services Committee was due to consider a review of the eligibility criteria for adults with a disability and older people at the September meeting. The Council apologised again for the delay and acknowledged that it was well outwith their accepted timescale.

38. The Council confirmed that neither Mr C nor his MSP were provided with a copy of the Council's complaints procedure, although they claimed that the MSP was aware of the procedure through other channels.

(c) Conclusion

39. The Council complaints procedure does not specify a specific timescale for responses to complaints reviewed by the Chief Executive's Services. It states that they will deal with complaints 'as quickly as possible'. The Council have already acknowledged that their timescale for providing Mr C with a full response to his complaint was not acceptable and have apologised to him. However, it is not clear what action has been taken by the Council in an effort to ensure this does not re-occur. I, therefore, partially uphold this complaint.

(c) Recommendation

40. The Ombudsman recommends that the Council put a system in place to ensure that, in future, complaints are dealt with in a timely manner.

41. I am pleased to report that the Council have accepted the recommendations. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

27 March 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Fife Council
Officer 1	Community Care Assistant or 'Social Worker'
Officer 2	Home Care Manager
Officer 3	Home Care Services Team Leader
DPS	Direct Payments Services
Officer 4	Home Care Service Manager
Officer 5	Direct Payments Support Officer
The Guidance	Direct Payments Social Work (Scotland) Act 1968: Sections 12B and C Policy and Practice Guidance

List of legislation and policies considered

The Scottish Executive Direct Payments Social Work (Scotland) Act 1968:
Sections 12B and C Policy and Practice Guidance

The Scottish Executive A Guide to Receiving Direct Payments

Fife Council Comments, Complaints and Compliments procedure

Do you need Community Care Services from Fife Social Work Service? (a
guide to obtaining Community Care service from Fife Social Work Service)

Fife Council Social Work Service Policy on Eligibility Criteria (Adults with
Disability and Older People)

Fife Council Direct Payments Instead of Home Care procedure