

Scottish Parliament Region: Mid Scotland and Fife

Case 200502766: Stirling Council

Summary of Investigation

Category

Local government: Complaints handling

Overview

The complainant (Mrs C) raised concerns about the way Stirling Council (the Council) had addressed her complaints relating to an email (the Email) and note of a telephone conversation she received as part of an information request.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to adequately investigate and take action regarding Mrs C's complaint about the Email (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 15 March 2006 a woman (referred to in this report as Mrs C) complained to the Ombudsman that the response to a complaint she had brought to Stirling Council (the Council) was not adequate. In 2002, when Mrs C's disabled son was approaching his 16th birthday, Mr and Mrs C applied for legal guardianship of him which they felt was necessary due to his disability. This process involved the Council and took longer to finalise than Mrs C had hoped. Mrs C did not complain about this at that time. In late 2005, Mrs C was asked by a non-Council body for her views on the guardianship application process as part of a survey. In preparation for giving her reply, Mrs C asked her solicitors to supply her with copies of the background documentation. Among the documents the solicitors supplied was an email (the Email) that had been sent by a solicitor (the Council Solicitor) in the Council's Legal Section to Mrs C's solicitors on 29 August 2002. Mrs C felt that the content of the Email was inaccurate, inappropriate and offensive. She wrote a letter of complaint to the Council on 11 November 2005. Mrs C's complaint was investigated by the Council and a response supplied to her on 2 March 2006.

2. In considering Mrs C's complaint I have considered section 10(1) of The Scottish Public Services Ombudsman Act 2002. This section states that 'The Ombudsman must not consider a complaint made more than 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made outwith that period'. Although the Email was sent in 2002, Mrs C only became aware of it in 2005 so I decided to examine Mrs C's complaint about the Email but not the process as a whole since Mrs C had not complained about this at the time.

3. The complaint from Mrs C which I have investigated is that the Council failed to adequately investigate and take action regarding Mrs C's complaint about the Email.

Investigation

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including communication between Mrs C and the Council, copies of the Council's investigation documents and a copy of the Email. I have not included in this report every detail investigated, but I am

satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

5. Section 57(4) of the Adults With Incapacity (Scotland) Act 2000 states: 'Where an applicant claims an interest in the personal welfare of the adult and is not the local authority, he shall give notice to the chief social work officer of his intention to make an application under this section and the report referred to in subsection (3)(b) shall be prepared by the chief social work officer or, as the case may be, the mental health officer, within 21 days of the date of the notice'.

6. In the Email the Council Solicitor stated that she was responding to Mrs C's solicitors' letter of 16 August 2002 concerning the Application for Guardianship of Mrs C's son. She indicated that she had attempted to call Mrs C's solicitors on 29 August 2002 but had not been able to speak to the solicitor who was dealing with Mrs C's case. She said that she had written the Email because she was not going to be available the following day and that she would have preferred to speak to the solicitor who was dealing with Mrs C's case directly.

7. The Council Solicitor acknowledged the notice that Mrs C's solicitors had served in terms of section 57(4) of the Adults With Incapacity (Scotland) Act 2000 and advised that due to current circumstances the Council's Mental Health Team were not able to meet the 21 day time limit set down in the Act. The Council Solicitor wrote 'you will appreciate that the mental health officer would be coming to the case 'blind' in that they have no background knowledge of the case whatsoever, and indeed they don't even have the benefit of having a copy Application or medical reports to examine at this stage to at least help them 'find their feet'.

8. The Council Solicitor went on to state 'There is however a more fundamental concern on the part of the Mental Health Team ... That is, they have no idea about the reasons behind seeking an order, the powers that would be sought and whether indeed Guardianship is necessary and appropriate. It is for this reason that the mental health officers would prefer to have informal discussions with the proposed applicants prior to any report having to be prepared. This is especially so in this case where there is ongoing involvement by the Council's Children and Families Team ... It may be that something less than Guardianship is suitable – it would therefore be sensible to thrash out the issues before an Application is made to court ... the 21 day timescale for the

report ... is insufficient time, and in any event it may be agreed that an Application is not actually required, given the minimum intervention principle which the Act advocates. In essence I am wondering whether you would be prepared to withdraw your Notice at this stage, in favour of engaging in informal discussions so that the MH Team can get a proper handle on the case and give it a more thorough consideration without the rush of a 21 day time limit'.

Complaint: The Council failed to adequately investigate and take action regarding Mrs C's complaint about the Email

9. Mrs C complained to the Council on 12 November 2005 that the Council Solicitor's claim that various parts of the Council had no background knowledge of the complaint was inaccurate. She felt that the mention of the ongoing involvement of the Children and Families Team unreasonably insinuated that there were underlying family issues and asked what was meant by this. Mrs C asked if Council records had been checked in preparing the Email, or if other departments had been consulted. Mrs C complained that she believed the Council's time would have been more appropriately spent on internal discussion with a view to fulfilling their obligations under the Adults With Incapacity (Scotland) Act 2000 rather than writing an email seeking to extend the time they had to prepare a report or to remove the need for them to prepare a report at all. Finally, Mrs C stated that the Council should be seeking to improve their communication. This letter was received by the Council on 18 November 2005.

10. The Council acknowledged Mrs C's letter on 24 November 2005. Mrs C wrote to them again on 28 November 2005 asking the Council to clarify which Council team had been involved with her family at the time of the Email. In the Email the Council Solicitor stated that the Children and Families Team had been involved but Mrs C had paperwork indicating the 'Children With and Affected by Disability Team' had been involved at the time.

11. The Social Work Complaints Officer (the Complaints Officer) responded to Mrs C on 12 January 2006. In a lengthy letter the Complaints Officer explained the Council's position and response to the points that Mrs C had raised:

- the Council Solicitor no longer worked for the Council and that it had not been possible to involve her in the investigation of the complaint;
- the Email was intended to establish contact and raise issues that the Council Solicitor felt would require further discussion between the Council and Mrs C's solicitors;

- subsequent communications between the Council and Mrs C's solicitors indicated that Mrs C's solicitors had not initially provided all the relevant information to allow the authority to proceed;
- the Council Solicitor had been asked to find out if there was any possibility of any flexibility in the submission date of the Council's report and that the Email represented a beginning of dialogue on this issue;
- the Council Solicitor had tried to telephone Mrs C's solicitors. However, the Council Solicitor had been advised that, due to their respective work patterns, it was unlikely that they would be able to speak for some time and she decided to send the Email instead of waiting to speak to Mrs C's solicitors;
- the Council Solicitor's references to more fundamental concerns about the reasons and necessity for guardianship could have been contextually clearer. He said that the Council's concerns were about the lack of expected information accompanying the formal notification of application and he specifically mentioned that copies of the application and medical reports would have been expected;
- mention of the involvement of the Children and Families Team had not been intended to be critical of Mr and Mrs C or in any way sinister;
- the Council Social Work Department had been aware of Mr and Mrs C's intention to apply for guardianship;
- the Council officer Mrs C and her family had dealt with at the time the Email was written was a member of the Children With and Affected by Disability Team but that this was a specialist team of Social Workers who were also members of the Children and Families Teams for the particular areas that they covered and
- the Email was open to different interpretations due to the circumstances of its writing.

He apologised for any upset that the Email had caused Mrs C and assured her that no offence or criticism of her family circumstances was intended.

12. Mrs C wrote again to the Complaints Officer on 31 January 2006. Mrs C accepted that her solicitors had not sent a copy of the application to the Council along with the notification of application but explained that she had been in contact with the Office of the Public Guardian and had been told that copies of the medical reports were not required to be sent to the Council. Mrs C also pointed out that two days prior to the date of the Email her solicitors had been advised which Social Worker had been appointed to prepare the Council's

report on her application. She also said that informal notice of her intention to apply for guardianship had been sent to the Council some time previously. Given all of this, she asked for an acknowledgement that the Council had been aware of the potential guardianship application. Mrs C also gave her view that the Email had gone further than enquire about the flexibility of the reporting timescale and had requested that the application be withdrawn in favour of informal discussions over whether guardianship was required at all. Mrs C asked for an explanation of this. Mrs C also indicated that she did not agree with the Complaints Officer that mention of the involvement of the Children and Families Team was not intended to be critical or sinister.

13. The Complaints Officer acknowledged this letter on 2 February 2006 and responded to Mrs C in a letter dated 22 February 2006, but actually sent on 2 March 2006. This delay was due to the Complaints Officer awaiting the comments of the Legal Services Department following his drafting of the response on 22 February. In the letter the Complaints Officer restated the opinions given in his previous letter and his opinion regarding mention of the involvement of the Children and Families Team. However, he made clear that he respected that Mrs C may have reached a different conclusion. He reiterated that the Council had accepted that the Email was open to various interpretations. Finally, the Complaints Officer restated the Council's view of the purpose of the Email and reiterated the apology that had been given in his previous letter.

14. As well as copies of their correspondence with Mrs C, the Council supplied me with the Complaints Officer's file on his investigation of Mrs C's complaint. This includes a 'Complaint Referral Form' that records the Complaints Officer's understanding of the complaint, a plan of action to be taken in investigating it, a note of what services or agencies had been involved in the complaint and a summary of the outcome. Also included are various pieces of internal correspondence between the Complaints Officer and other officers of the Council related to the investigation. These included discussions about whether or not the complaint should be dealt with under the Social Work Department complaints procedure or the general Council complaints procedure. It was decided to route the complaint through the Council's complaints procedure as, although the complaint related to the Social Work Department, it was more clearly and usefully focused on the actions of the Council Solicitor.

15. The Council's complaints procedure indicates that following the response of the Complaints Officer for the relevant service the complainant could appeal to the Corporate Complaints Officer. The procedure indicates that complaints should be acknowledged within four working days and responded to within 15 working days. When this timescale was breached in Mrs C's case, the Council had contacted her and explained the reasons why.

16. I asked the Council why no point of escalation had been advised to Mrs C in either of the Complaints Officer's responses to her complaint. The Council told me that the Complaints Officer took the view that he would deal with any follow-up to the complaint as he had already determined it as being inappropriate to be dealt with through the Social Work Complaints Process. The Council acknowledged that Mrs C should have been given notice on how to proceed further in the complaints procedure in the Complaints Officer's response.

17. Before I began investigating Mrs C's complaint the Council told me that they felt that any further investigation by them would not be useful due to the time that had elapsed since the Email had been written and that their opinion on the matter remained as indicated in the Complaints Officer's report.

18. I asked the Council what actions they had taken as a result of Mrs C's complaint. They advised me that checks had been made that the current Council practice in relation to guardianship applications was in line with statutory timescales and the national code of practice and that these had been found to be satisfactory. The Council told me that in such circumstances it would be usual to review the implications of the complaint with the author of the Email but, as the Council Solicitor was no longer employed by the Council, this had not been possible.

(a) Conclusion

19. The Complaints Officer investigated Mrs C's complaints. The information supplied by the Council indicates that his investigation was appropriately planned and undertaken. Where the procedure's timescales were breached, Mrs C was notified and given an explanation for the breach. The internal correspondence indicates that the Complaints Officer accurately and appropriately used the evidence he was supplied by other Council officers.

20. The Complaints Officer's letters directly addressed all the points Mrs C raised in her letters, with the exception of the mention of the Council's poor internal communication. This allegation of poor internal communication is based on the fact that informal notice of Mr and Mrs C's intention to apply for guardianship was not communicated throughout the Council, and specifically to the Council Solicitor. The Complaints Officer's letters addressed this issue in that they indicated that the circumstances of writing the Email were not ideal.

21. In the Complaint's Officer's second letter the Council apologised that the Email contained factual inaccuracies and ambiguities. The Email was a substitute for an intended telephone call and, when seen in this context, the Council Solicitor's actions in writing the Email are understandable. Some of the detail of the Council Solicitor's view was unlikely to have been mentioned in any record of the proposed telephone call which would have been between the Council Solicitor, who it has been accepted was not fully conversant with the details of the case, and a more informed party in Mrs C's solicitors. I would note, however, that the application was subsequently progressed so a clearer understanding was, eventually, reached.

22. The Council Solicitor not being available for interview created an unfortunate obstacle to the Complaints Officer's investigation but in my view he made a reasonable interpretation of the Email based on the available evidence and appropriately acknowledged that the Email was open to interpretation. In explaining the Council's view of the intention and wording of the Email and apologising to Mrs C for any upset that sight of the Email had caused and taking the other actions outlined in paragraph 18, I consider the Council took appropriate action, based on the conclusion of the Complaints Officer's investigation. It is unfortunate that the Council did not properly advise Mrs C on how to escalate her complaint but, given the length of time that had passed since the Email had been written, it is unlikely that an investigatory review by the Corporate Complaints Officer would have resulted in any significant alteration of the Council's conclusions. Given all of the above, I do not uphold the complaint.

Recommendations

23. The Ombudsman has no recommendations to make.

19 December 2007

Explanation of abbreviations used

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| Mrs C | The complainant |
| The Council | Stirling Council |
| The Email | An email written by the Solicitor and sent to Mrs C's solicitors on 29 August 2002 |
| The Council Solicitor | The solicitor in the Council's Legal Section who wrote the Email |
| The Complaints Officer | The Social Work Complaints Officer |

List of legislation and policies considered

Adults With Incapacity (Scotland) Act 2000