

Scottish Parliament Region: South of Scotland

Case 200603657: South Ayrshire Council

Summary of Investigation

Category

Local government: Social work; Policy/administration

Overview

Mrs C is disabled and had been assessed by her local Council as requiring Community Care. She chose to receive Direct Payments and employ her own personal assistants to provide this, under a national scheme administered by each local Council. In 2005 she moved to live in the South Ayrshire Council (the Council) area. Mrs C was concerned about the Council assessment of her needs under the Council's Direct Payments. In addition, Mrs C was assessed as requiring adaptations to the bathroom in her new home. The Council said they would support an application for a grant for a wet-floor shower area. Mrs C complained that the Council had not taken into account her need for a bath for health reasons. This latter point was dealt with by a Social Work Complaints Review Committee (the CRC) of the Council and not upheld. Mrs C said she felt the CRC did not give her complaint adequate consideration and that the recommendation for regular reviews was not followed by the Council.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the CRC did not give Mrs C's complaint about the Council's bathing assessment adequate consideration (*not upheld*);
- (b) Mrs C was not allowed to make her case in full to the CRC and was not allowed to take breaks (*not upheld*);
- (c) the CRC's recommendations were not followed and reviews of Mrs C's needs were not carried out sufficiently regularly (*not upheld*);
- (d) the Council mishandled Mrs C's application for Direct Payments (*not upheld*);
- (e) the Council did not provide Mrs C with sufficient support to allow her to administer the Direct Payments (*not upheld*); and
- (f) the Council's response to her complaints about the Direct Payments was inadequate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review the guidance given to members of staff preparing reports and documentation for CRCs to ensure that panel members are fully aware of all relevant legislation, guidance and policy and provided with all relevant documents held by the Council;
- (ii) highlight in guidance to CRC panel members that they should remain sensitive to the needs of disabled complainants; and
- (iii) use this complaint as a case study with complaints handling staff to emphasis the importance of dealing with complaints as a whole and of being flexible in their approach.

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

Main Investigation Report

Introduction

1. In 2005 Mrs C decided to move to the South Ayrshire Council (the Council) area from Glasgow. Mrs C was disabled and in receipt of Direct Payments from the Glasgow City Council, which allowed her to pay directly for personal assistants, to provide the community care she had been assessed as requiring. A meeting was held at her home in Glasgow in October 2005, with Mrs C's current social worker and a Team Leader from the Council's Occupational Therapy (OT) department (Officer 1) who explained the OT department would manage the case and would seek to maximise her ability to function in her new home. They discussed Mrs C's needs and the question of Direct Payments from the Council. It was explained that this could not simply be transferred but that Mrs C would need to be re-assessed. Mrs C moved to the Council area in December 2005 and was assessed in December 2005 and January 2006. The Council assessed Mrs C as needing two and a half hours less community care per week than she had received in Glasgow.

2. Over the course of 2006, Mrs C and an advocacy worker working on her behalf (Mr D) were regularly in contact with the Council. They repeatedly disputed the assessed hours and said Mrs C should have been managed and assessed by a social worker and not an occupational therapist.

3. Not long after moving into her new home, it was agreed by Mrs C and the Council that changes would need to be made to the bathroom to make it suitable for her long term needs. The Council said they would support a grant application to help fund alterations to the bathroom but that they would only support removing the bath and installing a wet-floor shower area. They said they could not support either replacing the current bath with a walk-in bath or help to fund extending the bathroom to support both a bath and a wet-floor shower area. This aspect of Mrs C's concerns was heard by a Social Work Complaints Review Committee (CRC) on 25 October 2006 and a report placed before the Council's Social Justice Committee on 14 December 2006. On the same day, Mrs C was informed her complaint was not upheld.

4. On 21 February 2007, the Ombudsman received a detailed complaint from Mrs C about the CRC. In her complaint to the Ombudsman's office, Mrs C also raised the question of her Direct Payments and, in particular, said she was unhappy with: the difference in assessed hours between Glasgow and the

Council; the matters which were funded and amount of funding; and that she had not been provided with adequate support to help her with the administration of the Direct Payments she had received.

5. The complaints from Mrs C which I have investigated are that:
- (a) the CRC did not give Mrs C's complaint about the Council's bathing assessment adequate consideration
 - (b) Mrs C was not allowed to make her case in full to the CRC and was not allowed to take breaks;
 - (c) the CRC's recommendations were not followed and the review of Mrs C's needs were not carried out sufficiently regularly;
 - (d) the Council mishandled Mrs C's application for Direct Payments;
 - (e) the Council did not provide Mrs C with sufficient support to allow her to administer the Direct Payments; and
 - (f) the Council's response to her complaints about the Direct Payments this was inadequate.

Investigation

6. In investigating this complaint I considered correspondence between Mrs C and the Council. I made enquiries of the Council and spoke to both Mrs C and Mr D. I also considered relevant Council policies, legislation and guidance. These are listed in Annex 2. Abbreviations used in this report are set out in Annex 1.

7. 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.

Legislative and Policy Background

Grants for adaptations

8. The Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 provides that, in certain circumstances, local authorities may or must provide grants for improving and repairing private housing. Under the legislation, grants are either mandatory or discretionary. Section 244 provides that grants must be provided for any of the standard amenities, including additional standard amenity which is essential to the needs of the disabled occupant. Standard amenities are defined as a sink, fixed bath or shower, a wash hand basin, all with a satisfactory supply of hot and cold water and a water closet or waterless closet. Section 236 provides that local authorities may

provide assistance by making improvement grants in relation to a house for a disabled occupant when such works are required to make it suitable for the disabled person's accommodation, welfare or employment.

9. The relevant guidance notes make it clear that it is for the local authority to determine whether proposed works are eligible, necessary and appropriate. They are not required to make grant available for all eligible works and may impose restrictions taking account of national and local priorities and the resources available for them. Once they have approved the works as eligible, local authorities then need to consider the amount of grant they can provide in line with the regulations.

Regulations for Complaints Review Committees

10. Section 5B of the Social Work (Scotland) Act 1968 gave the Secretary of State the power to require local authorities to establish procedures for considering complaints relating to their social work functions. In 1996, the Social Work (Representations) (Scotland) Directions 1996 (the Directions) were issued. These stated that if a complainant remained unsatisfied with a response from a local authority the matter should be referred to a CRC. The CRC should make recommendations to the social work or other committee who, in turn, should decide what action to take and notify the complainant in writing of that decision. The Directions set out rules for the membership of such committees and say that members should have experience of either social work matters or the conduct of proceedings before tribunals. The Chairperson should be independent and have knowledge of both.

11. A circular with Guidance notes was issued with the Directions in 1996 (the CRC Guidance). The CRC Guidance stated that CRCs must be conducted formally and have regard to generally accepted procedures which accord with natural justice. They should not, though, be so inflexible that the procedures would inhibit the ability of the CRC to facilitate a resolution. The CRC Guidance also said CRCs 'should consider not only the manner in which decisions were made but also decisions about assessment and service provision made on the basis of local authority policies or the professional judgement of local authority staff'.

Direct Payments

12. The Social Work (Scotland) Act 1968, sections 12B and 12C, provide that where a person is assessed as requiring Community Care provision the Council

may make payments direct to that person, who can then use the funds to secure that service. This legislation was supplemented by Scottish Executive¹ Guidance in the form of the Direct Payments Policy and Practice Guidance (the Direct Payments Guidance) issued in June 2003.² UPDATE, Scotland's National Disability Information Service, provides a number of factsheets and guides for both applicants and Councils. The Direct Payments Guidance explicitly recommends the factsheets to Councils.

13. By choosing to receive Direct Payments, the recipient becomes an employer and the Direct Payments Guidance recommends that a contract be drawn up in the form of a letter of agreement between the Council and the recipient. Factsheet 2 emphasises the importance of independent support organisations to help recipients and to ensure that Councils do not inadvertently take on employer responsibilities. Factsheet 2 advises that such groups are particularly good at providing advice on independent living, legal responsibilities and states that they could also take on payroll support and the training of personal assistants.

14. The Direct Payments Guidance also emphasises the importance of a holistic approach and of providing a joint package involving NHS partners where possible and ensuring that the individual is involved in discussing the package provided. Each Council has discretion in setting the rate of Direct Payments but this must be sufficient to enable the recipient to secure service of a standard that will satisfy the Council that their needs are being met. This should include a sum to help with fees for payroll and book keeping. Councils are encouraged to consider funding administration costs such as advertising, disclosure checks and start up cost where appropriate.

Single shared assessments

15. The Scottish Executive also produced guidance on the assessment of Community Care needs (Circular CCD/2001) (the Assessment Guidance). This applies whether the individual chooses to receive services or direct payments from the Council and was issued in 2001 for an implementation date of April 2002. This introduced the single shared assessment, which is designed to be

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

² At the time of this report, consultation was ongoing on new guidance.

led by a single professional, with other specialist involvement as appropriate. The assessment should facilitate access to all Community Care services and the aim was to reduce duplication of effort by different organisations. Joint working between Councils and NHS bodies is actively encouraged. The guidance makes it clear that a wide range of professionals will be suitable assessors and a screening process should ensure that the correct person is appointed.

(a) The CRC did not give Mrs C's complaint about the Council's bathing assessment adequate consideration; (b) Mrs C was not allowed to make her case in full to the CRC and was not allowed to take breaks; and (c) the CRC's recommendations were not followed and reviews of Mrs C's needs were not carried out sufficiently regularly

Background

16. Following the initial assessment in January 2006, a review meeting was held on 2 March 2006 at Mrs C's home. In the list of outcomes it was said that Mrs C's care manager (an Occupational Therapist - Officer 2) would visit to discuss a wet-floor shower area for Mrs C's bathroom. On 5 March 2006 Mrs C telephoned to say she would like the wet-floor shower urgently and had had difficulty using a bath aid provided by a private company. Officer 2 visited on 14 March 2006. Mrs C was noted to have been unhappy that she would need to have her bath removed to have a wet-floor shower. She said she required both a bath and a shower because of her health problems and her GP supported this. Officer 2 said that there was not room for this in the existing bathroom but that a wall could possibly be knocked down to extend the space. Mrs C was noted to have said she would be prepared to fund the cost difference to allow the bathroom to be extended and a bath retained.

17. On 4 April 2006 a visit was held to discuss the grant process for the shower. This was noted to be a difficult meeting by Officer 1 and Officer 2, who were both present, as was Mr D. The notes taken by the officers said that Mrs C became very upset and that she felt she could not afford to have the extra work done to ensure she retained a bath as well as a shower. Officer 2 spoke to the plumbers used by the Council on 12 April 2006. She noted that they had telephoned because when they had visited Mrs C she had insisted that a walk-in bath be put in place rather than a shower. Mrs C had been told that in the current bathroom this was not structurally possible. Officer 1 wrote to Mrs C on 13 April 2006. She said the OT department could only support work that was essential and Mrs C had difficulty getting into her bath. Officer 1 said only

a facility which would remove this difficulty would be considered and they felt a wet-floor shower was the best option. Any other adaptations would need to be carried out at her own expense.

18. The Council received a letter from Mrs C's GP dated 24 April 2006 saying that she supported Mrs C's request for a walk-in bath with shower, as she benefited from a bath from time to time. Mrs C's MP also wrote on 21 April 2006, to say that Mrs C had indicated she would be happy to pay the difference to allow the bathroom to be extended and a bath retained. The Acting Head of the OT Department (the Acting Head) wrote to the GP on 5 May 2006 to say that Mrs C's needs were best met by a wet-floor shower as she had difficulty getting into a bath. The response to the MP was also dated 5 May and the Acting Head said to him that as a walk-in bath would still require Mrs C to step up and down it would not be approved.

19. On 29 May 2006, Mr D made a formal complaint to the Council on Mrs C's behalf. He said the current shower facility was unsafe and inadequate, the Council refused to even consider a walk-in bath and had not taken account of her GP's correspondence. The Acting Head wrote to Mr D on 15 June 2006 and said that it was the professional view of OT that a wet-floor shower was the best option for her current and future bathing needs. It was their understanding that Mrs C's therapeutic need for bathing could be met with hydrotherapy, which was being explored through a health referral.

20. On 26 June 2006 an occupational therapist with the local NHS board (Officer 3) wrote to the Council. Mrs C had been referred to a Board rehabilitation centre for an assessment by a GP. Officer 3 said that Mrs C was no longer using the bath aid as it had been attached to plywood, which was now coming away from the wall. Mrs C had said she wanted a walk-in bath and Officer 3 had discussed possible problems with this. Mrs C was advised of some alternative options including a wet-floor shower. Officer 3 said it had been agreed she would pass OT issues back to the Council.

21. On 30 June 2006 Mrs C wrote to appeal the first stage of the complaint process. Mrs C was sent a formal response on 18 July 2006 by the Acting Director of Social Work, Housing and Health (the Acting Director). The Acting Director said she had reviewed the assessment and that this had been thorough. She accepted that this was not in line with Mrs C's preference but said that the wet-floor area shower was the most appropriate long term solution.

Mrs C was told that to access a walk-in bath she would be required to take a step up, make a 180 degree turn and to sit down. This would increase the risk of injury. The letter said Mrs C had been visited on 14 July 2006 to discuss fitting a bath bubble which might help her to bathe safely in her bath.

22. On 2 August 2006, Mrs C confirmed that she would like a CRC to consider her complaints. As Mrs C had refused further contact with the OT department until her complaint was resolved and a second occupational therapist from the NHS Board visited her on 14 August 2006. Following assessment, it was decided that a bath seat be fitted which would allow her to use the bath with minimal assistance. The equipment was fitted on 15 August 2006.

The Complaints Review Committee

23. On 28 August 2006 Mrs C was informed that a CRC would be held on 25 October 2006. A letter with a copy of the Council's guidance notes was sent to her on 18 October 2006. These said that paperwork should be submitted seven days before the CRC and that the complainant would be given the opportunity to present the case and sum up at the end. Copies of background correspondence and a report prepared by Officer 1 were sent to members and copied to Mrs C. Mrs C was allowed to submit documentation on the day of the hearing and the panel were given a letter from her GP dated 20 July 2006. This said Mrs C had been receiving hydrotherapy and that it had been reinforced to her by her GP that lying in a bath helped her muscles. She had regular carers and would not need to get in and out of a bath on her own. A physiotherapist's letter (received 26 October 2006) referred to the benefit she was receiving from a current course of hydrotherapy but that this would not continue indefinitely and she would be discharged in a few weeks.

24. A minute of the meeting was sent to Mrs C on 27 October 2006. This said that at the end of the meeting Mrs C had been asked to confirm that she had had the opportunity to present her complaint and was noted to have done so. The meeting was noted to have begun at 10:30 and ended at 12:10.

25. The CRC's report was dated 7 November 2006. On the same day Mrs C's case was transferred to a Community Care team, as she had indicated she did not wish further OT contact. The CRC concluded that: the approach by OT had been correct; the assessment had been thorough; and regular reviews should continue to be held. The report said that the decision that the wet-floor shower area was most appropriate had been correct. The report was accepted by the

Social Justice Committee on 14 December 2006 and Mrs C was sent a copy of the report the same day.

26. In her complaint to the Ombudsman, Mrs C detailed a number of specific concerns she had about the conduct of the hearing: she said she did not receive paperwork sufficiently in advance and did not have enough notice to provide her own paperwork, she had been told to turn up with this on the day; time was not given to allow her or her advocate to respond; and she was offered no breaks. She said she did not respond when asked whether she felt she had been given the opportunity to present her case as she had felt so unhappy with the process. In the course of my investigation, I spoke to Mr D who confirmed that there had been no breaks; he was also unsure whether Mrs C's documents were placed before the CRC; and there had been a reluctance to listen to his questions.

27. In response to my enquiries, the Council said they were part of a scheme with neighbouring Councils which ensured there was a pool of independent, trained panel members available for CRCs as required. They also confirmed the background of the Chair of the panel and that he had both social work and tribunal experience.

28. Following the findings of the CRC, a review form was completed on 16 January 2007 by a social worker from the new team. Mrs C said she had suffered an injury in December 2006 and an OT review was requested. The first appointment was re-scheduled and the assessment carried out on 12 March 2007. Also on 12 March 2007, a consultant physician with the homoeopathic hospital wrote to the Council to say Mrs C felt she needed the facility of the bath and shower to alleviate some of her medical problems. He said he would be grateful if this could be looked at with some sympathy. The notes of the assessment on 12 March 2007 say that a bath bubble was demonstrated and left in situ. It was said Mrs C had agreed not to insist on a walk-in bath and that, instead, a grant application would be made asking the Council to cover the cost of a bath out and a wet-floor area shower in. Mrs C indicated she intended to also have the bathroom extended so there would be space to also have a walk-in bath as well as the wet-floor area shower. It was said she could use the amount awarded towards the cost of the full works she wished to have.

29. On 21 March 2007 Mrs C was visited again by Officer 1 and a building control officer to discuss the proposed alterations to her bathroom. A letter dated 23 March 2007 from Officer 1 included a sketch drawing of alterations which included extending the bathroom to include both a bath and a shower. However, Officer 1 made it clear that the Council would not support a grant application for the additional works and Mrs C was asked to provide quotes which separated the grant-supported works from the additional works she wished to have done to extend the bathroom and retain a bath. The letter stated that OT were responsible for ensuring access to washing facilities but medical treatment could not be funded by the social work department. Officer 1 wrote to the consultant physician (see paragraph 28) on 2 April 2007 and explained that the Council were responsible for providing essential, accessible facilities and Mrs C had been assessed on this basis. This did not include equipment for medical treatment.

(a) Conclusion

30. Mrs C's main complaint about the CRC was that she felt that the CRC did not consider her complaint adequately. I have seen the report prepared by the CRC and they did consider the information provided by her GP and were aware that Mrs C disagreed with the assessment. They also had the evidence of her correspondence. They had sight of a background report prepared by Officer 1 and had sight of the letter from the occupational therapist with the Board relating to her assessment of Mrs C's needs. In line with guidance, the CRC not only considered whether the assessment had been carried out properly but considered the decision itself, which they said was correct. Also in line with the guidance, the CRC Chair had social work experience.

31. However, I have noted that the CRC were not provided with background information about the Council's policy and the relevant legislation and guidance (see Annex 2).³ Although the Chair did have social work experience, this is a complex area and I would have expected the relevant policy to have been made available to the CRC as part of the papers provided in advance. I have also noted that the CRC correctly considered whether the decision made was the right one and did not limit their consideration to a review of procedures followed. However, in coming to this conclusion they were not provided with contemporaneous accounts of the assessments made. These were available in

³ In their comments on the draft report, the Council confirmed that the guidance was referred to and quoted from.

the form of detailed notes kept by the OT department and in the completed record of assessment forms. As the details of the report show that the CRC were aware of the key issues and there was evidence of the nature of the assessment in both the correspondence and the report, I am not recommending that the CRC revisit this decision and, on balance, I am not minded to uphold the complaint under heading (a). However, I am concerned that they made a judgement on the assessments made without seeing them. On this basis the Ombudsman recommends that the Council ensure that, where direct evidence is available, this is placed before the CRC.

(a) Recommendation

32. The Ombudsman recommends that the Council review the guidance given to members of staff preparing reports and documentation for CRCs to ensure that panel members are fully aware of all relevant legislation, guidance and policy and provided with all relevant documents held by the Council.

(b) and (c) Conclusion

33. Mrs C also complained that she was not given sufficient time prior to or during the hearing to present her case and she was concerned that she was given no breaks.

34. Mrs C was informed in August 2006 of the date of the CRC meeting. I have noted that Mrs C was told she could present additional documentation on the day and was allowed to do so. She did receive the documentation presented to the CRC from the Council one week before the hearing. The physiotherapist's letter was not considered by them as it did not arrive until after the hearing but Mrs C's needs were re-assessed and reviewed following the CRC.

35. On the points raised by Mrs C about the conduct of the hearing on the day, Mrs C's perception that she was not fully listened to is supported by Mr D. However, neither Mrs C nor Mr D objected to the minute of the meeting at the time which stated that Mrs C confirmed she was fully heard. While I understand Mrs C now refutes this and Mr D supports her concerns, it is difficult to criticise the CRC, particularly when Mrs C had representation and the minute was not challenged, for believing that she was happy she had been listened to. I was concerned that Mrs C and Mr D reported no breaks had been offered, particularly given Mrs C's disability. The meeting lasted for one hour and forty minutes. Again, I have noted that Mrs C was represented at the hearing and

this may have led the CRC to believe that Mr D would be proactive on such matters. In the circumstances I am not upholding head of complaint (b). However, advocacy workers may not be fully aware of a complainant's needs and, while I am not upholding any aspect of the complaint on the conduct of the CRC hearing, the Ombudsman recommends on a point of good practice that this be highlighted to CRC panel members.

36. Turning to head (c), from the evidence, Mrs C's bathing needs have been assessed not only by the OT department but by the local NHS Board. In the period considered here (December 2006 to March 2007), several assessments of her bathing requirements were made. Following acceptance of the recommendation of regular reviews in December 2006, a review was held in January 2007 and a further assessment in March 2007. I do not uphold any aspect of this complaint on the frequency of the reviews/assessments.

(b) and (c) Recommendations

37. The Ombudsman recommends that the Council highlight in guidance to CRC panel members that they should remain sensitive to the needs of disabled complainants.

(d) The Council mishandled Mrs C's application for Direct Payments; and (e) the Council did not provide Mrs C with sufficient support to allow her to administer the Direct Payments

38. Mrs C was in receipt of Direct Payments before she moved to the Council area. These were supplemented by an award from the Independent Living Fund (ILF). This is a UK wide fund which also provides direct payment to allow disabled people to employ their own personal assistants. The Direct Payments Guidance states that such funds could be used by a service user to purchase additional or better quality services. Mrs C used the Glasgow Centre for Inclusive Living (GCIL) organisation for payroll services. In her complaint to the Ombudsman, Mrs C raised a number of issues about her direct payments: why her assessment of hours was less than in Glasgow; the matters which were funded and amount of funding; a difference in assessment by the Council and ILF; and whether additional support should have been provided to help her with the administration. In considering her complaint, I have reviewed whether the Council have dealt with Mrs C in line with their own policy and whether the policy is in line with the Direct Payments Guidance. In reporting on my consideration I do not detail all contact between Mrs C and the Council or all the

details of the concerns raised by Mrs C but mention only factors which were key to my decision.

39. In the initial meeting of October 2005 (see paragraph 1), Mrs C was told that it was not possible to simply transfer Direct Payments from one Council to another. The Council would require their own assessment and Mrs C was warned that, in order to manage their finances, the Council were operating a waiting list for direct payment applicants. On 13 January 2006, it was confirmed that the waiting list was small and Mrs C could be provided with direct payments straight away. A calculation was made based on the Council's rate and on the hours assessed, as required, by the OT department following Mrs C's assessment on 5 January 2006. The hours were lower than those provided in Glasgow and Mrs C questioned this as did her sister and carer. Officer 1 discussed the care plan with Mrs C's carer and provision was increased from 24 hours a week to 27.5. This remained two and a half hours less than Mrs C had previously received. From mid-January Mrs C repeatedly said she felt that the OT department were not suitable to undertake assessments and she required social work assessment.

40. On 24 January 2006 Mrs C indicated she would not sign the Direct Payment form as she disagreed with the assessment. After it was explained she could not receive direct payments without signing this, she did so. The form was signed on 15 February 2006 and contained information on Mrs C's disagreement with the assessment. This disagreement was again noted in the letter of undertaking signed on 22 February 2006 by Mrs C. This set out the mutual obligations accepted by the Council and Mrs C in setting up direct payment provision.

41. Meanwhile, on 23 January 2006, Mrs C had requested advertising costs be included in the Direct Payment as she needed to replace a carer. Officer 2 contacted the Council's Finance Department and the OT notes say she was told by the Finance Department that they were unable to fund this as it was normally the client's responsibility. In response to my enquiries, the Finance Department said they had been advised Mrs C intended to keep her own carers and, therefore, had not been assessed as needing this. They also said that recipients were encouraged to use the Job Centre and support agencies to advertise. This service was free. The Council would consider advertising and any other reasonable costs if required.

42. In line with Council policy, a review of Mrs C's Direct Payments was made on 2 March 2006. This led to no change in the assessed number of hours. As there had been a reduction and a change of Council provider, ILF also required an assessment and a joint visit was held on 20 March 2006. In April 2006, ILF informed the Council that they were considering increasing the provision following this meeting. Between April and July 2006 there was significant contact between ILF and the Council but, in the end, provision was not increased. From the internal emails I have seen, there appeared to have been some confusion about what had been agreed on the meeting of 20 March 2006 with ILF, considering that the Council had agreed to Mrs C's request for additional overnight assistance. The Council say they had noted this request but not agreed to it and provided ILF with detailed reasons explaining why they did not feel this additional provision was required. After discussion, ILF agreed a new package without an additional overnight stay. They sought further information from the Council in relation to GCIL costs. Because of illness, there was a significant delay in this information being passed to ILF. As a result, the ILF funding package was finally put in place at the end of October 2006. On reviewing the documents provided I noted that, following a review by ILF in 2005, they had also queried overnight provision at Mrs C's request. Glasgow City Council confirmed at that time that they did not consider this provision was required.

43. Meanwhile, in July 2006, the Council had sought the first financial statement relating to Mrs C's Direct Payments. In the letter of agreement, Mrs C had agreed to provide this. Mrs C said she found this difficult and there was evidence on file of the Finance Department helping her through this and through the subsequent period of June to December 2006. These revealed significant problems with Mrs C's record-keeping and in March 2007 the Council considered withdrawing Mrs C's Direct Payments and providing care directly. Two meetings were held and at these Mrs C was encouraged to use the Ayrshire Inclusive Living Network (AILN - the local equivalent of GCIL). It was explained that, while AILN would not be able to undertake the tasks, they could provide support and ensure that the process would be straightforward for Mrs C.

44. In the discussions around the issues of the provision of financial statements, it became clear that Mrs C was choosing to pay a slightly higher hourly rate to her carers than that provided by the Council. Mrs C has said she felt the Council's rate was too low and was less than that paid in Glasgow. The Council said Mrs C was responsible for paying the shortfall between their rate

and the rate she had agreed with her carers. Mrs C also said she understood the Council had to pay for disclosure checks for her carers. Given the problems that had been experienced with the management of the financial aspects of the Direct Payments, Mrs C was asked for and agreed to provide monthly statements to ensure that Direct Payments continued. Mrs C felt, despite the assistance offered by AILN, that she required additional administrative support and chose to pay for this herself.⁴

45. In a letter to Mrs C dated 29 March 2007, the Council said they felt the cost she was choosing to pay for financial record-keeping was high, given the discussions they had had about submitting this monthly which should make this easier. They also explained that under their policy the person employed was responsible for paying for any disclosure checks rather than, as Mrs C believed, the Council being responsible.

46. After receiving the first few monthly statements of her Direct Payments, the Council noted that Mrs C had paid a significant amount to a carer for clothing and she was informed that the Direct Payments only covered protective clothing and not work clothing. She was informed of the types of protective clothing that the Direct Payments covered and advised if additional protective clothing was required she should apply for additional funding.

(d) and (e) Conclusion

47. I understand that it has been confusing for Mrs C that, although the Direct Payments scheme is available nationwide and the same guidance and legislation applies, she was unable to simply transfer provision from Glasgow to the Council. However, the Direct Payment scheme is designed to be administered by each local authority separately and each Council is responsible for assessing individual needs and setting payment levels. Within the legislation and guidance, each Council has discretion in setting their own policy. I have reviewed the policy applied by the Council in Mrs C's case and this appears to be generally in line with the Direct Payments Guidance and the factsheets issued by UPDATE. Mrs C was assessed in line with their guidance and the Council has also provided evidence showing that the rates of payment were reviewed regularly. The only exception is the reference to disclosure

⁴ In her comments on a draft of this report, Mrs C said that she had preferred to remain with GCIL as they had more staff and the problems with this reconciliation was that her key contact had been on sick leave.

checks which the Council make explicitly the responsibility of the employee. The Direct Payments Guidance asks that the Council consider covering such costs in their Direct Payment. Nonetheless, I have noted that the Council policy ensures that this cost is not expected to be borne by the person receiving Direct Payments.

48. Mrs C has been concerned that, because of the complexities surrounding Direct Payments, the OT Department were not best placed to assess her needs. Although this has now changed, the most recent assessment by a social work assistant has not led to changes in the assessed hours. There is no evidence that a Social Work assessment of her needs in January 2006 would have differed. In any event, OT involvement would have been required because of her mobility problems.

49. There is, though, some evidence that the OT department had difficulties dealing both with Mrs C's requests for further information about Direct Payments and with the ILF. They sought relevant advice from the Finance Department but on at least one occasion the advice noted as given by the Finance Department differed from the position I have been given (see paragraph 41). It is not clear why this occurred. There were also delays while dealing with the ILF while advice was sought by Officer 2. The Assessment Guidance makes it clear that it is appropriate for one key manager to be appointed to pull in expert information. The aim of this was to reduce the number of people an individual required to contact while being assessed. In order for this to work efficiently, Councils have to consider which professional is best placed to be the care manager. From the OT notes, it is clear that when Mrs C raised concerns they considered whether responsibility should be moved to a different department and this was discussed with Social Work as a result of Mrs C's concerns. Following the deterioration of Mrs C's relationship with the OT department, responsibility was moved in November 2006. However, the Council's initial assessment was that, given her issues with mobility, an OT lead was reasonable and this was correctly reconsidered in light of subsequent developments. In the circumstances, I do not uphold any aspect of head of complaint (d).

50. I also have not found that inadequate administrative support was offered. The Direct Payments guidance makes it clear that the Council needed to remain separate from this, to ensure they did not take on employer liability, and Mrs C's obligations were clearly set out in her letter of undertaking (see paragraph 40).

Considerable efforts were made by the Council to ensure Mrs C continued to receive Direct Payments, despite the difficulties they had in gathering accurate financial information. I, therefore, do not uphold head of complaint (e).

(f) The Council's response to Mrs C's complaints about the Direct Payments was inadequate

51. In the complaint letter of 29 May 2006 (see paragraph 20) the number of hours in Mrs C's assessment was raised with the Acting Head. On 5 June 2006 a letter was sent to Mr D saying the substance of the complaint dealt with the bathing issue and asked him to confirm this. The Council say they received no response to this letter.

52. The formal response from the Council of 15 June 2006 did not deal with matters around the reduction of hours but said that it was the view of the Acting Head that matters not explicitly covered in that letter but referred to by Mr D in his letter had already been answered. On 30 June 2006 Mrs C wrote with her concerns enclosing Mr D's initial letter and the response, which she said was inadequate. She raised the question of a lack of social work involvement as well as bathing. A letter of 13 July 2006 from the Acting Head dealt with the reduction in hours and the question of allocating a social worker to Mrs C. He said that this was not a formal response to her appeal which she would receive in due course. The Acting Head said Mrs C's care hours had been comprehensively assessed and he was not aware of any circumstances that required further assessment. Any review of her functional mobility would be best undertaken by an Occupational Therapist. As Mrs C wanted only limited contact with the OT department, the only matters that would be looked at would be the Direct Payments which would be monitored on a six monthly review.

53. A letter from the Acting Director of 18 July 2006 dealt with the bathing assessment. It explicitly referred to the letter from the Acting Head of 13 July 2006 and the matters raised in it, which she said answered Mrs C's other issues. In her letter of reply, of 2 August 2006, Mrs C asked if she could go to Independent Review (CRC) and asked that the issue of reduced hours and failure of the Council to deal with the ILF in providing more hours be considered. On 21 August 2006 the Head of Legal Services wrote to inform her that the CRC could only deal with her current complaint about bathing. No reference was made to her other concerns. Mrs C wrote again on 12 October 2006. She referred to a telephone conversation with the Head of Legal Services and asked that the reduction of hours be discussed, as this had

been in dispute since the beginning. She also said she had had no response to a request for re-assessment raised by Mr D on 12 September 2006 and asked that this to be considered. On 23 October 2006 the Head of Legal Services wrote a brief letter which noted Mrs C was pursuing a re-assessment with the social work department and that the review would only deal with the complaint in relation to bathing and OT assessment.

54. A reply on 11 October 2006 to Mr D's letter of 12 September 2006 (see paragraph 53) by the Acting Head referred to his letter of 13 July which he said dealt with how he felt his should be taken forward. He said that the direct payments had been reviewed but that as he had said in his letter of 13 July he would be happy to arrange six monthly reviews and that he would arrange for a review of her functional mobility.

55. I asked the Council to comment on why the Direct Payments had not been considered by the CRC. The Head of Legal Services said that the earlier decision on Direct Payments had 'not been pursued by the Complainer. She was advised to raise this afresh with the [Social Work] Department through a request for re-assessment (See letters dated 21 August 2006 and 23 October 2006)'.

(f) Conclusion

56. Mrs C's complaints about the handling of the Direct Payments application and subsequent administration were not considered by the CRC. The Council have said Mrs C did not pursue this with them (see paragraph 55) but this clearly contradicts the evidence I have seen, which showed Mrs C repeatedly raising this issue with them. It is true that Mr D did not respond to the letter of 5 June 2006 which asked him to confirm the substance of his complaint. However, Mrs C raised these issues (handling of the Direct Payment application and subsequent administration) repeatedly, following that letter and I have not seen evidence that the Council dealt with these matters directly in their formal complaint response letters, which they should have done. The Council have also said she was advised to pursue this through re-assessment but this was not accurate as there were limits put on what they would consider in the re-assessment (see paragraph 53). In any event, their view that this was the best way forward should not have prevented them from informing Mrs C she had other options if she remained unhappy.

57. From the evidence I have seen, it would have been reasonable for Mrs C to assume that she could not take these matters forward as a complaint. I am particularly concerned by the Council's response letter of 21 August 2006. This makes no reference to any of the other matters raised nor gave her advice about how to pursue her concerns. The Council's subsequent letter of 23 October 2006 simply stated that re-assessment was being pursued by Mrs C. This, in itself, did not preclude the issues from being dealt with by the CRC. In all the circumstances, I uphold this complaint, given the Council did not formally consider Mrs C's concerns despite her repeated attempts to raise them.

58. In summary, this has been a lengthy report and, in reflecting the number of points raised and my findings, I recognise that Mrs C is likely to be disappointed with the outcome.

(f) Recommendation

59. The Ombudsman recommends that this complaint be used as a case study with complaints handling staff to emphasise the importance of dealing with complaints as a whole and of being flexible in their approach.

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

Explanation of abbreviations used

Mrs C	The complainant
Mr D	An advocacy worker who represented Mrs C
The Council	South Ayrshire Council
Officer 1	Occupational Therapy Team Leader
Officer 2	The occupational therapist who was originally appointed Mrs C's care manager
Officer 3	Occupational Therapist with the local Health Board
Acting Head	Acting Head of Social Work
Acting Director	Acting Director of Social Work, Housing and Health
CRC	Social Work Complaints Review Committee
The Directions	The Social Work (Representations) (Scotland) Directions 1996
OT	Occupational therapy
ILF	Independent Living Fund
AILN	Ayrshire Inclusive Living Network
GCIL	Glasgow Centre for Inclusive Living
The Direct Payments Guidance	Policy and Practice Guidance on Direct Payments (issued June 2003)

The Assessment Guidance	Guidance on Single Shared Assessment of Community Care Needs (Circular No CCD8/2001)
The CRC Guidance	Guidance on Local Authority Complaints Procedures (Circular No SWSG5/1996)

List of legislation and policies considered

Housing (Scotland) Act 1987 as amended

Social Work (Scotland) Act 1968 as amended

Guidance on Local Authority Complaints Procedures (Circular No SWSG5/1996)

Guidance on Single Shared Assessment of Community Care Needs (Circular No CCD8/2001)

UPDATE Factsheets, 2, 6 and 7

Policy and Practice Guidance on Direct Payments (issued June 2003)

Guidance on Improvement and Repair Grants (Issued September 03 – amended November 2004)

South Ayrshire Council's Eligibility Criteria and Guidance – Equipment and Adaptations 2002

South Ayrshire Council's Direct Payments Procedures January 2004

South Ayrshire Council's Guidance note on Complaint Review Committee Procedure