

Scottish Parliament Region: Mid Scotland and Fife

Case 200600108: The Scottish Commission for the Regulation of Care

Summary of Investigation

Category

Scottish Government and Devolved administration: Scottish Public Body; Care and Health; Regulation of Care; Complaints Handling

Overview

The complainant (Miss C) raised concerns that the Scottish Commission for the Regulation of Care (the Care Commission) did not carry out an adequate investigation of a complaint she made about the quality of care her mother had received at a residential care home. She also complained that a further complaint that she made to the Care Commission in October 2005 was not properly investigated.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Care Commission did not carry out an adequate investigation of Miss C's complaint of 30 April 2005 (*not upheld*); and
- (b) the Care Commission did not adequately investigate Miss C's complaint of 14 October 2005 (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Miss C made a complaint to The Scottish Commission for the Regulation of Care (the Care Commission) regarding the care and treatment of her mother (Mrs A) during the last days of her life in a residential care home (the Home). Miss C complained that the Care Commission did not carry out an adequate investigation of her initial complaint as she felt the report did not probe deeply enough into the quality of care Mrs A had received at the Home and the actions of the Home in relation to her deteriorating condition. Miss C was particularly concerned about the involvement of the staff member who had been responsible for her mother's care during the night. She also complained that a further complaint that she made to the Care Commission in October 2005 was not properly investigated.

2. The complaints from Miss C which I have investigated are that:
- (a) the Care Commission did not carry out an adequate investigation of Miss C's complaint of 30 April 2005; and
 - (b) the Care Commission did not adequately investigate Miss C's complaint of 14 October 2005.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant information, including correspondence between Miss C and the Care Commission, Miss C and the Home, the Home and the Care Commission and the internal correspondence of the Care Commission. I also examined the Home's nursing record for Mrs A and the notes of the Care Commission's investigations. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Miss C and the Care Commission were given an opportunity to comment on a draft of this report.

4. Mrs A was resident at the Home for 12 months prior to March 2005. At approximately 11:00 on 29 March 2005 Mrs A's general practitioner (the GP) was called by the Home as she was very confused and disoriented. The GP examined her and advised the Home to continue Mrs A's dosage of antibiotics and encourage her to take fluids. He told the Home to call him again if there was no improvement over the next 24 hours. By the evening of 29 March 2005, records show that Mrs A's confusion had subsided and she had eaten a little

food. In the early morning of 30 March 2005 Mrs A had some periods of confusion but also some periods of relaxation and sleeping. The GP was called again at 08:30 after further deterioration of Mrs A's condition was noted. At 10:00 it was decided, in consultation with Miss C, that Mrs A would be admitted to hospital. By 11:45 Mrs A's condition had deteriorated and an emergency ambulance request was made to take her to hospital. Mrs A passed away in hospital the following evening.

5. Miss C complained to the Home on 20 April 2005 that a decision not to admit Mrs A to hospital on 29 March 2005 was taken without Miss C being consulted and that she was not made aware that discussion about this had occurred. Miss C had copied her correspondence to the Care Commission and included a covering letter explaining that she believed Mrs A should have had appropriate treatment sooner and that the night staff of the Home should have contacted the GP and herself in the early hours of 30 March 2005. She gave her view that there were deficiencies in the standards of the Home and that she hoped to encourage a more robust and safe approach to resident care.

6. On 29 April 2005 Miss C was advised that the Home's investigation had concluded that her complaint was without foundation. The following day she complained formally to the Care Commission about the Home's conclusion.

(a) The Care Commission did not carry out an adequate investigation of Miss C's complaint of 30 April 2005

7. Miss C complained that the Care Commission's investigation of her complaint was not adequate because she did not feel it thoroughly investigated the events of the final days of Mrs A's life and the quality of care she received. Miss C was particularly concerned with the actions of the staff responsible for Mrs A's care during the night. Miss C also complained that the Care Commission had not responded appropriately to the comments and questions she raised with them after her complaint had been investigated.

8. Miss C's complaint was allocated to a member of staff (Officer 1). Officer 1 was on leave when the complaint was allocated to her, so her Team Leader (the Team Leader) wrote to Miss C in her absence. The Team Leader's first letter to Miss C, acknowledging the letter of 20 April 2005, was sent on 29 April 2005. A second letter, acknowledging the change in circumstance noted in Miss C's letter of 30 April 2005, was sent on 2 May 2005. A third letter was sent on 5 May 2005. This letter duplicated the text of the letter of

29 April 2005 but was dated 5 May 2005. On 9 May 2005 Miss C wrote to the Team Leader about her confusion over these three letters. The Team Leader responded to this and indicated that Miss C should disregard the third letter.

9. Officer 1 contacted Miss C by telephone and during May 2005 they discussed Miss C's complaint and the information that Officer 1 felt would be useful to the investigation. Officer 1 kept Miss C informed of the progress of her investigation and the fact that Miss C would be able to seek a review of the Care Commission's final response if she was dissatisfied with it.

10. The Care Commission supplied me with copies of their investigation file related to this complaint. This included the handwritten notes of Officer 1. In the notes Officer 1 wrote that shortly before the final response letter was sent, Miss C told her that she had requested a meeting with Mrs A's GP but the GP had been unable to meet with her for some time.

11. The Team Leader sent Miss C the Care Commission's final response on 7 June 2005. The response stated that three complaints had been investigated. These were based on the complaints Miss C had raised in letters to the Operations Manager and the Care Commission of 20 April 2005 (see paragraph 5).

12. The first complaint, that discussion about admitting Mrs A to hospital had taken place on 29 March 2005 without Miss C's involvement, was not upheld. The Care Commission explained that the written record of the GP's visit on 29 March 2005 did not indicate that any discussion had taken place and this was supported by evidence gathered at an interview with a staff member from the Home. The Care Commission concluded that, as there was no evidence of any discussion of hospital admission on 29 March 2005, the Home had not acted inappropriately. Miss C disagreed with this conclusion.

13. The second complaint, that the Home's response to Miss C's complaint did not give information about the process used to investigate the matter or the evidence upon which the conclusions were based, was partially upheld. The Care Commission noted that the Home had dealt with the complaint quickly and a clear conclusion had been given. They stated that a response from the Home about a previous complaint from Miss C had given full details about why the conclusion had been reached on that occasion. The Care Commission accepted that it was reasonable for Miss C to expect to be provided with full

details of how the conclusion had been reached in this case, and that the Home had not done this. As a result of their conclusion the Care Commission advised the Home that they expected that complaints would be responded to appropriately and in a way that properly informs the complainant in the future. Miss C disagreed with this conclusion.

14. The final complaint, relating to Miss C's concerns about the actions of the staff on duty in the Home overnight and that Miss C and the GP should have been called earlier, was not upheld. The Care Commission explained that the Home's records showed that Mrs A's symptoms overnight did not represent a deterioration of her condition and that the GP had given clear instructions that Mrs A should be monitored over a 24 hour period, which had not elapsed until 08:30 on 30 March 2005. Miss C disagreed with this conclusion.

15. On 14 July 2005 Miss C wrote to Officer 1. Miss C said that the Care Commission's response had raised more questions for her than it had answered. She said that she wished to continue with her complaint against the Home. Miss C raised her concerns that some of the staff at the Home were not adequately skilled in caring for the elderly.

16. Officer 1 spoke to Miss C several times by telephone in the weeks following the writing of the letter. Officer 1 explained that her Team Leader was considering what action the Care Commission would take in response to Miss C's letter of 14 July 2005. Miss C also told Officer 1 that the GP had told her that he had discussed the possibility of admitting Mrs A to hospital on 29 March 2005, but that he had not made any record of this.

17. Miss C wrote again to Officer 1 on 1 September 2005. She complained that she had not received any formal response to her earlier letter and indicated that her previous experience of the Team Leader meant she was not surprised by the delay. She said that she was unhappy at the delay in responding to her letter and that her questions remained unanswered.

18. Officer 1 wrote to Miss C on 6 September 2005 advising her that a nursing colleague was in the process of reviewing the evidence available about Mrs A's care during the last few days of her life and was considering the specific issues raised in Miss C's letter of 14 July 2005.

19. Officer 1 wrote to Miss C again on 15 September 2005 with the result of the review of the evidence. Miss C was advised that the nursing colleague had not found any information that would alter the original findings. Officer 1 also told Miss C that it had been decided to refer the investigation to the Independent Healthcare Division of the Care Commission. Miss C was told she would be advised of the outcome in due course.

20. Miss C responded to this letter on 22 September 2005. She asked why no reference had been made to her complaint about the Team Leader. In response to this letter the Team Leader advised Miss C that her concerns had now been passed to the Care Commission's Concerns and Complaints Officer (the Complaints Officer).

21. The Complaints Officer wrote to Miss C on 30 September 2005. He explained to her that a review by the Independent Healthcare Division could only be requested by Miss C via a letter to him and he advised her on the criteria for this. He explained that a review would not result in a re-investigation of Miss C's original complaint. In addressing the points Miss C made about the Team Leader, the Complaints Officer said that he had reviewed her letter of 1 September 2005 and did not consider the reference Miss C had made to the Team Leader as being a complaint. He advised Miss C of the procedure for making a complaint about a member of Care Commission staff and enclosed a copy of the Care Commission's Complaints Procedure booklet.

22. Throughout the Complaints Procedure booklet the process for dealing with complaints about regulated care services or the Care Commission itself was dealt with entirely separately from the process for dealing with complaints about Care Commission staff.

23. Miss C wrote to Officer 1 on 3 October 2005 and to the Complaints Officer on 4 October 2005. Officer 1 advised Miss C that she had passed her letter to the Complaints Officer on 7 October 2005. In both her letters Miss C stressed that she had no concerns with the way the Care Commission's investigation had been conducted, but that her concern lay with the questions raised in her mind by the evidence provided in that investigation. In her letter to the Complaints Officer she made clear that she wanted a review to be undertaken.

24. The Complaints Officer wrote to Miss C on 11 October 2005. He explained to her that as the Care Commission's review process was specifically

linked to the process of original investigation and, as she had made clear she was happy with the process of investigation, a review of her complaint could not be appropriate. He also acknowledged that Miss C had clarified that she did not wish to make a complaint about the Team Leader.

(a) Conclusion

25. Miss C complained that the investigation undertaken by the Care Commission in response to her complaint was not sufficiently thorough and did not adequately address the actions of the night staff with responsibility for Mrs A. She also complained that the Care Commission had not addressed the comments and questions she raised after the final response to her complaint had been given.

26. Having considered the methods used by the Care Commission to investigate Miss C's complaint and the statements made to support their final response, I have reached the conclusion that the Care Commission demonstrated that their investigation was thorough and addressed all the complaints that Miss C raised in her letters of 20 and 30 April 2005.

27. As noted in paragraph 14 above, the Care Commission concluded that there was no evidence to support any criticism of the care Mrs A received from the night staff at the Home. Having reviewed that evidence myself I agree with this conclusion. Whilst it is clear that Miss C does not agree with this conclusion, her disagreement is not, in itself, evidence that a proper investigation was not undertaken.

28. In turning to Miss C's complaint about the Care Commission's response to her comments and questions following the sending of their final response it is important to make clear that the Care Commission was not required to answer any specific questions that Miss C raised with them, but to investigate the care Mrs A received at the Home. It would have been useful for this to be explained explicitly to Miss C in writing at an early stage. It is important to note that, as well as submitting the investigation to a nursing review, the Care Commission also offered Miss C the opportunity to seek a review by the Independent Healthcare Division despite her first comments being submitted outside the usually allowed timescale. The flexibility of the Care Commission in responding to the particular circumstances of the case is commendable. In her letter of 22 September 2005 Miss C referred to an earlier 'complaint' about the Team Leader. I agree with the Complaints Officer that it was not clear from Miss C's

earlier letters that she wished to lodge a formal complaint about the Team Leader. Similarly, it is understandable that the Care Commission had some difficulty understanding that Miss C wished to request a review of their investigation when she repeatedly made clear that she had no concerns with the way the Care Commission's investigation had been conducted.

29. Despite what I consider were a few very minor administrative errors, such as advising Miss C that her case had been referred to the Independent Healthcare Review department, I consider that, overall, the Care Commission carried out an adequate investigation of Miss C's complaints and responded reasonably to her subsequent comments and questions. Therefore, I do not uphold the complaint.

(b) The Care Commission did not adequately investigate Miss C's complaint of 14 October 2005

30. Miss C complained that the Care Commission did not address the questions she asked in her complaint against the Team Leader and the Complaints Officer in their response to her complaint.

31. Miss C wrote to Officer 1 on 14 October 2005. In her letter she made clear that she wished to make a formal complaint against the Team Leader for her inappropriate and unhelpful actions. She also stated that she wished to make a formal complaint against the Complaints Officer for his handling of her request for a further review of Officer 1's investigation. She then rehearsed the questions that she wanted answered, all of which were related to Mrs A's care in the Home.

32. Officer 1 advised Miss C on 18 October 2005 that her letter had been passed to senior management for consideration. Miss C's complaints were passed to a Complaint Investigation Officer (the Complaints Investigation Officer) to consider.

33. The Complaints Investigation Officer spoke with Miss C on the telephone several times and also met with her in person. The process of considering Miss C's complaint took some months as the Complaints Investigation Officer sought to fully understand her complaints. In mid-January 2006 Miss C withdrew her complaint against the Complaints Officer.

34. On 2 March 2006 a Regional Manager of the Care Commission (the Regional Manager) wrote to Miss C with the outcome of the investigation of her concerns. Miss C's complaint was partially upheld due to the duplication of letters in May 2005 (see paragraph 8). The Care Commission indicated that the Team Leader had taken steps to ensure that this would not happen again.

35. Miss C was not satisfied with this outcome and corresponded with the Regional Manager for some weeks, finally stating that she believed some of the content of the final response was factually inaccurate.

(b) Conclusion

36. Miss C complained that the Care Commission did not answer the questions she had asked in her complaint letter, however, these questions related to the care of Mrs A at the Home. As noted in paragraph 28, the Care Commission was not required to answer Miss C's specific questions in conducting an investigation into the care Mrs A received. Moreover, the clear distinction that the Care Commission's Complaints Procedure makes between general complaints about regulated care providers or the Care Commission's actions and complaints against members of Care Commission staff demonstrated that the care of Mrs A would not be dealt with in any response to Miss C's complaint of 14 October 2005. Miss C also complained about factual inaccuracies in the final response to her complaint. Having reviewed the investigation file, associated documents and the final response I can see no such inaccuracies. Given all of the above, therefore, I do not uphold the complaint.

Explanation of abbreviations used

Miss C	The complainant
The Care Commission	The Scottish Commission for the Regulation of Care
Mrs A	Miss C's mother
The Home	The residential care home where Mrs A lived
The GP	Mrs A's general practitioner
Officer 1	The officer of the Care Commission allocated Miss C's initial complaint
The Team Leader	Officer 1's Team Leader
The Complaints Officer	The Care Commission's Concerns and Complaints Officer
The Complaints Investigation Officer	The Care Commission's Complaints Investigation Officer
The Regional Manager	A Regional Manager of the Care Commission