

## Scottish Parliament Region: West of Scotland

### Case 200600702: Inverclyde Council

#### Summary of Investigation

##### **Category**

Local government: Social Work/Complaints handling (inc Social Work complaints procedures)

##### **Overview**

The complainant, Ms C, complained on behalf of her sister (Ms A) that Inverclyde Council (the Council)'s Social Work Department had failed to respond appropriately to concerns raised about the behaviour of Ms A's former partner towards their children. Ms C pursued this through the Council's complaint procedure and made written and oral submissions to a Complaints Review Committee (the CRC). The CRC did not uphold Ms C's complaint.

##### **Specific complaint and conclusion**

The complaint which has been investigated is that the CRC's consideration of this matter was inadequate and did not take into account all relevant evidence (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) ensure that guidance to CRC members and relevant staff clearly indicates the importance of careful drafting in the report, to ensure that the decision is fully recorded;
- (ii) ensure that, in future, any extension to the time limits, as set out in the Directions, is agreed by the parties; and
- (iii) apologise to Ms C for the failings identified in this report.

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

## **Main Investigation Report**

### **Introduction**

1. The complainant, Ms C, complained on behalf of her sister (Ms A) that Inverclyde Council (the Council)'s Social Work Department (the Department) had failed to respond appropriately to concerns raised about the behaviour of Ms A's former partner (Mr A) towards their children. Ms C pursued this through the Council's complaint procedure and made written and oral submissions to a Complaints Review Committee (CRC).

2. A CRC hearing was held in December 2005 and continued in February 2006, in respect of the complaint. Ms C summarised her complaint to the CRC as a failure by the Department to carry out adequate investigation into the circumstances of the children of Ms A and to comply with their own child protection procedures. Allegations had been made of inappropriate behaviour by Mr A towards the children. Ms C also said that the time scales laid down in the complaint procedure had not been followed. Ms C received the CRC's report with their findings for comments on 28 February 2006. The report was altered in response to some of her comments and the CRC report, dated 9 March 2006, was placed before the Health and Social Work Committee (the Social Work Committee) on 14 March 2006. The Social Work Committee also had copies of the closing statements of Ms C and the Department at the hearings and Ms C's comments on the report. The Social Work Committee upheld the findings of the report, which said that the Department had been entitled to deal with the case as they had done. The report did, however, identify areas for improvement and requested a report on progress by the Head of the Department be submitted to the Social Work Committee within six months. On 5 June 2006 Ms C complained to the Ombudsman.

3. The complaint from Ms C which I have investigated is that the CRC's consideration of this matter was inadequate and did not take into account all relevant evidence.

### **Investigation**

4. In investigating this complaint I reviewed correspondence between Ms C and the Council, considered the evidence submitted to the CRC and had sight of the CRC report, the minute of the hearings and the decision of the Social Work Committee. In addition, I interviewed the members of the CRC and I also considered relevant legislation and guidance.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

### *Background*

6. In November 2003, the Department held a child protection case discussion relating to Ms A's children.<sup>1</sup> Further information was sought and a second meeting was scheduled for December 2003.<sup>2</sup> A senior manager decided there was no indication that the children were at risk and no further action was taken. In January 2004 a court action relating to access and residence for the children was settled. Ms C advised the Council, in a letter of 18 February 2004, that Ms A had been told she risked losing her children if she proceeded, as she did not have enough evidence to substantiate her concerns. The court order provided for one child to stay with Mr A<sup>3</sup> and the remaining children to reside with Ms A but to have contact with Mr A.

7. Ms C repeated her concerns about Mr A to the Council on a number of occasions in early 2004 and in March 2004 made a direct referral to the Reporter.<sup>4</sup> The Reporter asked the Department to prepare a background report. This was completed in August 2004. In November 2004 Ms A wrote a formal letter of complaint asking for a copy of the background report and asking why it was only when the Reporter became involved that this matter had been investigated. She said initial concerns had been raised with the Department in March 2003. Ms C approached an independent social care consultant (Consultant 1) who contacted the Reporter and the Department. In January 2005, the Department confirmed they were still investigating Ms A's complaint and noted that it had been five months since the background report to

---

<sup>1</sup> The Department involvement dated back to March 2003, when a neighbouring Council made them aware of concerns that the family may need assistance. This report does not detail all contact with the Council and, as it relates to child protection matters, much of the detail of the complaint is not included. Only information essential to provide an understanding of the report and the Ombudsman's decision is included.

<sup>2</sup> Ms C has maintained throughout that the further information sought was inadequate. The Council dispute this and have said that there was contact with other, relevant agencies.

<sup>3</sup> Mr A was living outwith the local authority area.

<sup>4</sup> The Reporter is an official employed by the Scottish Children's Reporter Administration. All children and young people who may need compulsory measures of supervision must be referred to the Reporter. The Reporter then decides whether the matter needs referred to a Children's Hearing.

the Reporter had been submitted but no children's hearing had been held. They said that, as well as investigating Ms A's concerns, they would prepare a supplementary report for the Reporter.

8. In March 2005 the Department responded in detail to Ms A's complaint and said they considered that they had acted appropriately throughout. Ms C wrote to ask that this be reviewed by the Chief Executive and said she still believed that the underlying concerns about Mr A's behaviour towards the children had not been fully investigated. She also said that Ms A had recently moved outwith the Council area. In April 2005 the Council completed the supplementary report for the Reporter. After confirming Ms C was acting on behalf of Ms A, the Chief Executive wrote to her in May 2005 upholding the findings in the Department's letter of March 2005.

9. Ms C complained again on 14 July 2005, repeating the earlier complaint by Ms A and raising new concerns about the supplementary report, staff involved in the review and a failure to respond to her letters. Ms A again confirmed Ms C was acting on her behalf. The Council responded to Ms C by saying a CRC would be held and also a fresh investigation held to consider her new concerns. The background reports were released to Ms C following discussion between the Council and the Reporter.

10. On 20 September 2005 the Council responded to the new concerns raised in July. On 29 September Ms C indicated that she remained dissatisfied with their response. Ms C wrote to the Council again on 21 October and 9 November to say she was unhappy with the delay in setting up the CRC hearing. As stated in paragraph 1, the first day of the CRC hearing was held in December 2005.

#### *Legislation*

11. 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.

12. The Directions set out a number of time limits. The response to the initial complaint should be issued within 28 days. The report by the CRC to the responsible committee should be made within 56 days of a request that the initial decision be reviewed and, within 42 days of receiving the report, the local authority should decide what action to take and notify the complainant in writing. The Directions provide that these limits can be extended if this is agreed by both the complainant and the local authority.

13. Circular no SWSG5/1996 with guidance notes (the Guidance) was issued with the Directions in 1996. The Guidance stated that CRCs must be conducted formally and have regard to generally accepted procedures which accord with natural justice. It also said that the 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'.

**Complaint: The CRC's consideration of this matter was inadequate and did not take into account all relevant evidence**

14. The complaint considered by the CRC was that Social Work services did not adequately investigate the circumstances of Ms A and her children nor did they follow the required child protection procedures while Ms A and her children were resident in the local authority area.

15. Prior to the CRC hearings in December 2005 and February 2006, Ms C, who subsequently represented Ms A at the hearing, had submitted substantial documentation relating to the complaint. This included an overview document written by Ms C and two reports written by independent consultants; one commissioned by Ms C (Consultant 1) and one by Ms C and Ms A's mother (Consultant 2). The Department produced a position statement. At the two day hearing oral evidence was heard from the two Consultants, Ms C and two members of the Department. Concluding statements were made in writing by Ms C and the Department. Ms C was not cross-examined although the Consultants were. The social worker who produced the first report for the Reporter and her supervisor had left the Council and were not present at either hearing. The responsible manager did appear and was cross-examined. The senior social worker who jointly prepared the supplementary report also gave evidence.

16. In their separate reports, Consultants 1 and 2 both criticised the Department's procedures and actions in this particular case. Consultant 2 said that the initial report prepared for the Reporter (see paragraph 7) showed a bland acceptance of Mr A's position while dismissing Ms A's concerns as anecdotal. Consultant 2 said the report was flawed, contradictory and inadequate. She was also concerned that the effect of alleged domestic abuse on Ms A did not appear to have been taken into account.<sup>5</sup> Consultant 1 said that the reports produced by the Department were largely descriptive. Furthermore, he said that they did not use all the information available to the Department or seek information from independent sources; in particular, the outcome of the initial involvement of the Department in December 2003 or of information relating to the court proceedings. He said that the first report seemed to indicate that the social worker had preferred Mr A's position to Ms A's and Ms C's but no reason was given as to why. The conclusion stood alone and was unsupported. The second assessment was concluded prematurely when some of the children and Mr A refused to participate. Consultant 1 was also concerned about the child protection procedures used by the Council and, in particular, highlighted the status of the meeting held in November 2003; whether a meeting was held in December 2003; who attended the meetings and why; what decision had been made; and how that was recorded (see paragraph 6).

17. I was also provided with hand-written notes of the CRC hearing. These showed that the witnesses gave evidence about Department procedures and the reports produced by the Department and submitted to the Reporter. The Department referred to improvements which had been made when dealing with cases where there was alleged domestic abuse. The Department also said that the Reporter had made no adverse comments on the adequacy of the reports which had been prepared for his use.

18. In their closing statement, the Department said in considering the complaint they had identified four areas for improvement. These were: failure to document the decision not to move to more formal child protection measures following the case discussion (see paragraph 6); lack of a clear practice note setting out the purpose and role of case discussion meetings involving both the Department and other agencies; the lack of clarity in a recommendation in the

---

<sup>5</sup> Consultant 2 provided a number of appendices with her report which described academic research on a number of issues related to the effect of domestic abuse.

supplementary report in 2005, which should have indicated a fuller assessment of the children should be carried out within the relevant procedures in the area they now lived; and a failure to adhere to timescales in responding to complaints.

19. The Department's closing statement pointed out that, following the contact with Consultant 1 in December 2005, the case had been allocated to a social worker with additional qualifications in child protection, a senior social worker also with such additional qualifications and a new senior manager given overall responsibility for the service provided. They said both Consultant 1 and Consultant 2 had agreed that the diagnostic tool to be used in the re-assessment was credible and that, in January 2005, the family had agreed to be involved in the re-assessment. This had not been completed because Ms A denied access to health records and Mr A and the children had not participated.<sup>6</sup>

20. In her closing statement, Ms C repeated her criticisms of the Department. She said she was concerned that comments had been made to the effect that the only evidence available was that communicated by Ms A to friends and that this had been rejected as hearsay. She said that such evidence was admissible and further that the Council had not sought corroboration of Mr A's evidence and had simply accepted his version of events. She also said that, following the move of Ms A and the children resident with her to another local authority area, the full file should have been sent to the social work department of the new area. At the end of the statement, she made a number of suggested recommendations including: the need to highlight concerns raised by Consultant 1 and Consultant 2 to the social worker's current employers; submitting information to the social work inspectorate and HMIE (Her Majesty's Inspectorate of Education); that a formal minute be prepared and be made available for both parties prior to the decision; and, given the failings were the fault of the Department, she asked that her expenses be reimbursed.

21. The report subsequently drafted was sent to Ms C for comment on 28 February 2006. Ms C commented again on the use of evidence and a failure to pass information to the new authority (see paragraph 20). The CRC added a

---

<sup>6</sup> In her comments on a previous draft of this report, Ms C said Ms A had previously supplied a mandate for access to health records and felt this had not been used correctly. Ms C said she felt Ms A's refusal to further involve the children was also reasonable.

paragraph to the report to explain their response to Consultant 1 and Consultant 2's evidence (see paragraph 23). The finalised report was submitted to the Social Work Committee on 14 March 2006. This contained the full closing submissions of both the Department and Ms C. The Social Work Committee were also provided with a copy of Ms C's comments on the draft of the report.

22. In their report of their findings, the CRC said that they considered their remit was to consider whether there had been 'a want' in the delivery of services, whether this could be remedied and, if necessary, to make recommendations to prevent a similar failure. The CRC considered that, as Ms A had now moved, any 'want in assessment' had been overtaken and their focus had been on whether the authority had failed in its duty and, if so, what measures should be taken to improve matters.

23. The CRC found that the Department had performed their duties satisfactorily. They also said that evidence of Consultant 1 and Consultant 2 was based only on an examination of files and they had not interviewed Ms A or the children. They noted some of the concerns they had raised had also been dealt with by the Department in their closing statement. The CRC adopted all four measures put forward by the Department and rejected the recommendations suggested by Ms C. The Social Work Committee adopted the report on 14 March and on 25 April 2006 Ms C received a copy of the final report and the Social Work Committee minute and was advised that the Council had approved this minute as a correct record on 20 April 2006.

24. In her complaint to the Ombudsman, Ms C said that the decision of the CRC was devoid of reasoning and, in particular, that: they had not dealt with the allegations of poor practice and appeared to uphold the fact that a telephone call to an alleged abuser was sufficient investigation; there had been no cross-examination of her evidence; and they had been inconsistent in rejecting some evidence as hearsay but accepting others. Ms C said she remained concerned that the Department had made their initial decision on the basis of their view of the relative credibility of Ms A and Mr A, without interviewing any other witnesses. This largely repeats the concerns raised before the CRC about the Council's actions.

25. In response to a previous draft of this report, the Council said that they strongly refuted the view that the investigation had solely been based on a



telephone contact with an alleged abuser and that they believed they had evidenced this fully to the CRC. The Council also said that timescales for complaints were now monitored and reported quarterly to the Department's management team and annually to the Social Work Committee. They provided copies of the new guidance on Case Discussion and Case Conferences. This clarified the status of such meetings and stated that they should be minuted and any decision to proceed or not to proceed to formal child protection procedures should be recorded, along with the reasoning for that decision. These actions were reported formally to the Social Work Committee in January 2007.

26. The Social Work Inspection Agency (SWIA) undertook a performance inspection of Inverclyde Council in September 2006. Their report was generally positive but did make recommendations for improvement. The SWIA reviewed a number of files and noted some concerns about the quality and consistency of risk management and assessment, although it was also noted that all child protection files which were looked at contained an up-to-date assessment. The SWIA also said that the Council's complaints monitoring officer was confident 80 percent of complaints were dealt with within the time scales.

27. Following the comments received on a previous draft of this report, all three members of the CRC were interviewed (CRC members A, B and C). The interviews focussed on their understanding of the remit of the CRC, the matters they had considered and the meaning of the apparent restriction in their consideration referred to in paragraph 22 of this report.

28. Although it was some time since the hearings, the two senior panel members (CRC Members A and B) could recall many of the details of the complaint. They both indicated they had considered the actions of the social workers and the decisions made. When asked to explain the reason why the report said they had not considered 'want of assessment', the panel members said they had concentrated their report on areas of concern and not commented where there was no concern.

29. As a result of the interviews, letters from the CRC members to the Council written about this case in 2006 were obtained. These were all written in response to a request for the release of information by Ms C. CRC Member A wrote on 14 October 2006, 'As I recall this complaint was examined in an extremely exhaustive matter – primarily determined by the Complainer. The Complainer did not convince the CRC of the case being made'. CRC

Member B on 16 October 2006 said 'when a complaint is not upheld one can imagine that a complainer will be displeased. However in the [Ms C] case the complainer was given every opportunity to present her case. In addition the CRC deliberated at some length before finalising its views'. CRC Member C in his letter dated 15 October 2006 described the case as 'unusually complex' and 'extra time had to be sent in discussing the points raised to arrive at the decisions made'.

### *Conclusion*

30. The role of the Ombudsman's office in reviewing a complaint about a CRC is to consider whether there is evidence of maladministration or service failure. In the absence of these, the CRC retain the right to exercise their own judgement on the professional decisions made by social workers.

31. In this case, the CRC had before them a substantial amount of documentary evidence and this was supplemented by a two day hearing, where much of this was subject to detailed cross-examination. Under the guidance notes, the CRC have to abide by the rules of natural justice (see paragraph 13). I have no concerns about the conduct of the hearings or the fact that Ms C's evidence was not cross-examined, as she was given an opportunity to present her concerns fully and Consultant 1 and Consultant 2 were cross-examined.

32. However, I am concerned that, in their report to the Social Work Committee, the CRC stated that they were restricting their consideration and not looking at whether there had been a 'want of assessment'. The Guidance states that a CRC has a broad remit and, in particular, that they should consider professional decisions. In the interviews with the CRC members, at least two members of the panel referred to clear consideration given to this in their discussion. The letters written closer to the time of the hearings in 2006 are even clearer that a full consideration was given and confirmed the views of all CRC members. I have considered this point carefully and, while I do not uphold this complaint given the evidence that all the matters raised were adequately considered and the recommendations made by the CRC on the balance of the evidence were matters for their discretion, the report produced does not clearly indicate that this is the case and is open to misinterpretation around the phrase 'want of assessment'. The Ombudsman, therefore, recommends that guidance to CRCs and members of Council staff who support them is reviewed, to ensure that reports fully reflect the decisions made.

33. Further, the report was issued to the responsible committee 239 days after the complainant requested a CRC in her letter of 14 July 2005. This letter did raise new concerns which were also subsequently considered by the CRC. In relation to these concerns, the report was issued 151 days after Ms C had indicated on 29 September 2005 that she remained dissatisfied with the Council's response. The Council have set in place monitoring to improve the time within which complaints are made in response to the failings identified. They were also in correspondence with Ms C about the delay and in general kept her informed of progress. However, while there is evidence she was concerned about the delay (see paragraph 10) there was no evidence that the Council sought to seek agreement for the breach of the deadlines or that they considered this when they put in place the monitoring system. This is despite the requirement to do so referred to in the Directions (see paragraph 12) and in their own complaints procedure.

34. Therefore, while I do not make any comment on the decisions of individual social workers or of the Department in assessing Ms C's concerns, the report issued did not clearly indicate that the CRC had considered all the points put to them and that the Council, while accepting there was delay, did not consider the clear breach of the Directions (see paragraph 12) in failing to ensure Ms C was given the opportunity to agree to this delay.

#### *Recommendations*

35. The Ombudsman recommends that the Council:

- (i) ensure that guidance to CRC members and relevant staff clearly indicates the importance of careful drafting in the report, to ensure the decision is fully recorded;
- (ii) ensure that, in future, any extension to the time limits, as set out in the Directions, is agreed by the parties; and
- (iii) apologise to Ms C for the failings identified in this report.

36. 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**

Ms C	The complainant
Ms A	The aggrieved, Ms C's sister
The Council	Inverclyde Council
The Department	The Social Work Department
Mr A	Ms A's former partner
CRC	Complaints Review Committee
The Social Work Committee	The Health and Social Work Committee
Consultant 1	Independent Social Care Consultant hired by Ms C to review the Council's handling of this matter and to produce a report for the CRC
The Directions	The Social Work (Representations) (Scotland) Directions 1996
Consultant 2	Independent Social Care Consultant hired by Ms C and Ms A's mother to produce a report for the CRC
The Guidance	Circular no SWSG5/1996
SWIA	Social Work Inspection Agency

**List of legislation and policies considered**

The Social Work (Scotland) Act 1968

The Social Work (Representations) (Scotland) Directions 1996

Circular no SWSG5/1996 (the Guidance)