

Scottish Parliament Region: Highlands and Island

Case 200701108: The Moray Council

Summary of Investigation

Category

Local government: Social Work; home help; charges for services

Overview

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

Specific complaints and conclusions

The complaints which have been investigated are that there was:

- (a) failure by the support organisation representing the Council (the Organisation) to provide accurate information to Ms C about her application for direct payments (*partially upheld, to the extent that there was a failure to refer Ms C back to the Council for appropriate advice*);
- (b) a delay in processing Ms C's application (*upheld*); and
- (c) failure to conduct a proper investigation into Ms C's complaint against the Organisation (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) have regard to the failures identified in this report when they undertake their planned review of their direct payments procedure;
- (ii) give appropriate support and assistance to Ms C to help her decide what help she needs to receive in her home and maintain this after implementation of any service offered by the Council;
- (iii) make a payment of £750 to Ms C in recognition of service failure and an additional sum of £250 for time and trouble; and
- (iv) as a matter of priority, take steps to implement a complaint process which is open, capable of proper audit and accessible by service users.

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

Main Investigation Report

Introduction

1. Ms C complained initially to the support organisation representing The Moray Council (the Council) (the Organisation) that she received inaccurate advice from them in connection with her application for direct payments. She complained that, as a result, she was £750 out of pocket and her health had been affected detrimentally. Ms C was aggrieved because the Organisation's representative who dealt with her (Officer 1) denied giving her inaccurate advice. She was dissatisfied with their investigation of the matter, as she believed that this did not take account of key witnesses who could verify her account of events.

2. Having exhausted the Organisation's complaints procedure without her complaint being resolved, Ms C pursued a formal complaint through the Council's complaints procedure. She was dissatisfied with the way they conducted the investigation. Her complaint to this office was on the grounds that there were shortcomings in the handling of her application for direct payments and failure by the Council to conduct a proper investigation into her complaint.

3. The complaints from Ms C which I have investigated are that there was:

- (a) failure by the support organisation representing the Council (the Organisation) to provide accurate information to Ms C about her application for direct payments;
- (b) a delay in processing Ms C's application; and
- (c) failure to conduct a proper investigation into Ms C's complaint against the Organisation.

Investigation

4. My investigation of this complaint initially involved the examination of the correspondence provided by Ms C. I met with Ms C. I also met with representatives of the Organisation and the Council, who provided me with relevant documents. This included a copy of the information pack which is provided by the Organisation to applicants for direct payments and case files from the Council. In conducting my investigation, I referred to the relevant legislation (Social Work (Scotland) Act 1968: Sections 12B and 12C - Direct Payments Policy and Practice Guidance) and to the Scottish Government website and Guidance (Direct Payments in Scotland).

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, the Organisation and the Council were given an opportunity to comment on a draft of this report.

6. The actions of the Organisation are open to investigation under the terms of the Scottish Public Services Ombudsman Act 2002 (the Act), which entitles the Ombudsman to investigate any action taken 'by or on behalf of' a listed body in exercise of its administrative functions (Section 5(1) (a) of the Act). Under Section 23(2) of the Act, action taken by a body within jurisdiction includes action taken by any person on its behalf, or to whom it has delegated functions.

Legislative Background

7. On 1 June 2003, it became a duty for local authorities to offer direct payments to disabled people who had been assessed as requiring community care services. People with mental health problems became eligible in 2004, although the 2003 Regulations (made under Section 12B (1) (b) of the Social Work (Scotland) Act 1968) specified that certain people may be ineligible and required to receive community care services.

8. Direct payments are made by the social work department following a community care assessment (Single Shared Assessment). If the applicant is assessed as qualifying for community care and makes a request to the local authority to pay for part or all of the services they need through self-directed support (direct payments), the local authority have a duty, with some provisos where payment might previously have been sought, to offer this. The question of whether the applicant should contribute or not to paying for the service is a separate issue for the local authority to determine. Direct payment is made so that people can organise and pay for their own services, instead of the local authority providing services. Direct payments are intended to provide an individual with flexibility, choice and control over how his/her services are provided.

9. The Scottish Government Guidance states that someone should be 'willing and able' to manage a direct payment 'alone or with assistance'. Supported decision-making plays a major role in helping people with learning difficulties and mental health problems to both consent to and manage direct payments. The amount of help someone gets should be geared to his or her wishes, needs

and choice of support arrangement, not to any perceived level of ability or disability.

10. The Scottish Government Guidance refers to published research by a range of organisations, such as the Joseph Rowntree Foundation, about some of the barriers to disabled people accessing direct payments, including difficulties accessing a social worker, lack of social work awareness of direct payments, lack of support and lack of available funds.

11. Guidance issued in July 2007 (Self-Directed Support – New National Guidance) requires local authorities to make direct payments on a gross basis and to recover the individual's contribution later. This ensures that people on self-directed support (direct payments) are on an equal footing with people receiving other local authority services.

Background

12. Ms C is a registered disabled adult who lives alone. She has suffered from anxiety and depression for several years.

13. The main events took place in 2005 and 2006. Ms C stated that her care worker (Social Worker 1) advised her to apply for direct payments. Social Worker 1 initially had suggested she have someone through the community care service to help her but this was not acceptable to Ms C because she has problems in dealing with strangers. She already had a home help whom she had engaged herself and she wished to continue with her services. Ms C was assessed by Social Worker 1 and an occupational therapist, under a community care assessment (see paragraph 8), as needing 11.5 hours help a week. However, Ms C notified Social Worker 1 on 7 February 2005 that she had decided to defer making an application for direct payments but she retained her home help.

14. Before Social Worker 1 went on maternity leave, she contacted the Organisation to provide support to Ms C in making an application for direct payments as Ms C had changed her mind and wished to apply.

15. Prior to Ms C submitting her application (in August 2005), Ms C stated that Officer 1 visited her in April 2005 and told her that, as she had already been assessed as needing 11.5 hours help per week, it was safe to continue to pay her home help and that all payments would be backdated to cover her outlay.

After the Council carried out a financial assessment and informed her that she would have to pay a weekly contribution, Ms C stated that Officer 1 advised her that she should appeal, as she would have little or nothing to contribute to her care package.

16. Ms C stated that, having accepted the advice from Officer 1 that she would receive direct payments and would have little or nothing to contribute to her care package, she continued with her home help's services while her application was being assessed. She used all her savings to pay for this service and she was not recompensed. She was aggrieved because Officer 1 denied giving her such advice.

17. Ms C was dissatisfied with the investigations conducted, both by the Organisation and by the Council, into the matter. Specifically, she complained that she received curt and discourteous replies from the Director of the Organisation, who had questioned her need to continue with her complaint following the initial investigation. She considered that her evidence was ignored and that both investigations which were undertaken failed to deal fully and properly with the facts.

The Council: Community Care – Home Care

18. The Council's website offers advice that it provides support to vulnerable people living at home and that care is available for a wide range of activities, including personal care, help with medication, domestic support, meal preparation, laundry, shopping and social care. It advises that the service can be accessed through GPs, Community Nursing staff, hospital ward staff or by direct application to the Community Services department of the Council. Advice is given too, that people seeking to access the service must undergo a community care assessment of need; that a financial assessment forms part of the community care assessment; and that charges for the service are made according to means. In their Direct Payments – Procedure (updated on 7 April 2008) the Council note in their section on Management of Direct Payments that these should be offered to people whom they consider will be able to manage them, either alone or with assistance.

19. At the time of this complaint, the Council did not issue an information leaflet but now have a leaflet entitled 'Self Directed Support – Empowering People', which gives advice on direct payments and the role played by their

recently appointed Self Directed Support Worker to provide advice and/or assistance to Council employees and service users.

The Organisation

20. The Council have contracted with the Organisation to provide support, information and advice to clients who are accessing direct payments on personnel issues. The introduction on the Organisation's website explains that people can employ their own personal assistants or pay an agency of their choice to provide support in personnel issues and that their service has been designed to provide knowledgeable assistance and advocacy to a new entrant to a direct payments scheme on such issues, relieving the applicant of much of the stress involved, and to support those who already receive benefit through direct payments. From the leaflet in the Organisation's information pack, which is made available to potential recipients, the support available includes one-to-one visits from fieldworkers to provide information on direct payments; support and advocacy at the individual care assessment; practical assistance with paperwork for recruitment; and an advocacy involvement in this process.

(a) Failure by the Organisation representing the Council (the Organisation) to provide accurate information to Ms C about her application for direct payments

21. Ms C recounted that, after Social Worker 1 contacted Officer 1. Officer 1 visited Ms C in April 2005 and explained how the Organisation worked.

22. When I interviewed Ms C, she explained that the reason she did not proceed with her application in February 2005 was due mainly to ill health. Another factor was that the Council were making major repairs to her home. However, she said that, after Officer 1's visit in April, she continued with her home help because Officer 1 had assured her that she would be refunded.

23. The Council files record that, in August 2005, Ms C submitted a self referral to the named care officer (Social Worker 2 - who was dealing with her in Social Worker 1's absence on maternity leave) asking for the direct payments process to be resurrected. Social Worker 2 decided that a re-assessment of Ms C's needs was required, given that it had been some months since her initial assessment (see paragraph 13). The re-assessment (which determined that Ms C required 10 hours help per week) was not undertaken until 1 November 2005. This is recorded as being due to Ms C declining a re-assessment by the same person who undertook the first assessment,

requiring a replacement suitable to her to be found. However, the Council have clarified that the first assessment was carried out jointly by Social Worker 1 and an Occupational Therapist. Ms C has commented that she would not have declined being re-assessed if this could have been carried out by Social Worker 1 but did decline the re-assessment being carried out by the person identified by the Council who was previously known to her.

24. Social Worker 2 wrote to Ms C on 6 November 2005 enclosing a financial assessment form (which she had partially completed) with instructions on completing and returning the form and giving Ms C advice that she had been re-assessed as requiring 10 hours support per week. (Ms C disputes that she received this letter and stated that she only received advice on 20 December 2005 at which time she completed and signed the form enclosed and duly returned it as instructed.)

25. Ms C informed me that during a visit to her in January 2006, Officer 1 telephoned the Council on her behalf and found out that her application for direct payments had been successful but that Ms C was required to contribute £44 per week (this was confirmed in writing with advice that she owed over £400 for her backdated contribution; however this was an error because the financial assessment on Ms C was not yet completed – see paragraph 51). Ms C informed me that Officer 1 expressed surprise at what she was being asked to pay and commented that her contribution should be little or nothing. On the advice of Officer 1, she appealed and was informed in April 2006 that her appeal for a reduction had been unsuccessful; instead of a reduction, her contribution was increased to £80.61 per week. She decided not to proceed with her application for direct payments because this sum was beyond her means and because she had already paid out £750 to fund home help support.

26. Ms C stated that she did not make a formal complaint to the Organisation about the advice she had received from Officer 1 immediately because, following a multi-agency case conference arranged by her Consultant Psychiatrist in June 2006, when she realised that there was to be no immediate resolution, her physical and mental health suffered a downturn. When she was able to pursue her complaint in September 2006, it was with the support of an independent advocate who has continued to offer support to Ms C in pursuing her complaint, with the Organisation, then with the Council (in 2007) and subsequently to the Ombudsman.

27. In October 2006, Ms C made a formal complaint to the Organisation about the advice she said she had received from their representative claiming that, if she had not received assurances from Officer 1 that the money she was paying to her home help would be refunded, she would have cancelled her home help. She informed the Organisation that the resolution she was seeking was an apology from them for the misinformation she was given (she said Officer 1 had already acknowledged her fault), a refund of the £750 which she lost through taking the advice of Officer 1 (payment to her home help) and financial compensation for the pain and suffering she was enduring because of the Organisation's intervention.

28. The Director of the Organisation responded to Ms C's complaint advising her that he did not believe that Officer 1 had given her inaccurate information. He clarified Officer 1's role was one of support and commented that she had acted in good faith in explaining how direct payments would operate and the procedure Ms C was required to follow in order to receive direct payments. However, Officer 1 had not offered advice on whether Ms C should apply.

29. He disagreed that Ms C was given advice that direct payments would be backdated or that it was mentioned that any contribution Ms C made would also be backdated. He stated that these were decisions which only the Council, not the Organisation, could make and pointed out that Social Worker 2 had made it clear in correspondence with her that if she received a backdated payment, any contribution she was required to make would also be backdated.

30. Further, he disagreed that Officer 1 advised Ms C to appeal, rather it had been explained to Ms C that she was entitled to appeal. He informed her that he did not accept that she had suffered any loss because of inaccurate information or advice provided by the Organisation and they had no liability to pay her any compensation. The Director of the Organisation also clarified to Ms C that if she had accepted the direct payments offered she would have received backdated monies in addition to her liability for the backdated contribution (Ms C has stated that she did not receive advice from the Council about any backdated monies which would be paid to her).

31. Ms C appealed the Director of the Organisation's decision, maintaining that she had been given explicit advice and assurances by Officer 1 and that if she had received accurate information, she would have made different choices. She stated that she had not received a letter from the Council with advice about

backdating of her contribution (this was a letter of 30 August 2005 from Social Worker 2).

32. In support of her complaint, Ms C produced two documents. One was a statement from someone present when Officer 1 visited Ms C in January 2006. The witness stated that she could vouch that Officer 1 had urged Ms C to appeal against her financial assessment because she should have little or nothing to contribute. Further, that Officer 1 had informed Ms C that the payments she had already made for the home help would be backdated to 1 November 2005. The witness statement is undated.

33. The second document was a minute of the case conference in June 2006 (see paragraph 26), at which Officer 1 was present and her role was discussed. The minutes record that:

'[Officer 1] had suggested that the direct payments money be backdated to Nov (to cover the cost of private arrangement). [Officer 1] stated that she did not realise that a contribution would be payable by [Ms C] towards her Direct payments.'

34. The Director of the Organisation responded to Ms C with confirmation that he had spoken to Officer 1 about the meeting where Ms C's witness was present (see paragraph 32) and that he was satisfied that Officer 1 had acted properly. He commented that Officer 1 had undertaken more than she was required to do by calling on Ms C to chase forms on her financial information which she had not returned. He confirmed that Officer 1 did telephone the Council in January 2006 but this was to be helpful because Officer 1 could see that Ms C was anxious and concerned that she had heard nothing from the Council. While Officer 1 had admitted that she may have been surprised by the level of contribution (£44) she was 'not in a position to express an opinion' or give advice about backdating of monies. He did not consider that the minutes supported Ms C's contention that the advice which Officer 1 gave was wrong or misleading.

35. At interview, the Director of the Organisation described their role as supplying a service to individuals who opt to take direct payments instead of community care. Officer 1's role is to assist a client to engage a personal carer and on other employment issues, such as adverts for recruitment and tax. He defined the role as one of support but agreed that in providing that support,

advice could be sought and given. He said that, if given, any advice would be based on fact.

36. He clarified that Officer 1 had told Ms C that there would be an opportunity to apply for a refund when the package started but she would have been unable to give detailed advice about the process because this was a matter for the Council. However, he conceded that his knowledge of what passed between Officer 1 and Ms C is based on what Officer 1 told him rather than contemporaneous notes because she responded to Ms C by visiting rather than in writing. She did not keep a record of her visits or meetings and there is no note of her visit to Ms C in January 2006 (see paragraph 25). Further, Officer 1 had not taken notes at the case conference and, while she had confirmed to him that she received the minutes of the meeting, she had filed them without reading them. The Director of the Organisation commented that since then, procedures have been tightened up and fieldworkers now have to keep a written record of any meetings and visits.

37. The Director of the Organisation said that the investigation into Ms C's complaint was conducted in accordance with their complaints procedure (set out in paragraph 67). He did not accept Ms C's criticism of his correspondence: he was trying to make the point that, rather than hold the Organisation responsible, Ms C should take responsibility for her own actions in failing to fill the forms in properly (although given instructions about how to do this) and delaying having a (second) assessment.

38. Further, he commented that he did not consider that it was necessary to contact Ms C or her witness. He had spoken, initially, to Officer 1, then the Social Work Manager and then the Chief Executive of the Organisation (who carried out the final stage in the complaint process).

39. On being asked how he could be sure of Officer 1's actions when there was no record of visits, the Director of the Organisation commented that Officer 1 was long-serving and experienced and he had confidence in her actions.

40. In a statement prepared by Officer 1 in response to Ms C's complaint, she confirmed that she telephoned Officer 2 when Ms C and her witness were present and that she was indeed shocked when she was told what the

contribution was going to be because she did not know anything about Ms C's income. She stated that:

'even if [Ms C] did not receive the letter [Social Worker 2] wrote to her dated 30/8/05, as the letter states both [Social Worker 2] and I had reminded her that she may have a contribution to make. I mentioned contribution to her with every conversation because I did not want her to agree to go ahead with the dp [direct payment] then find out she would have to pay.'

On money being backdated, Officer 1 stated that:

'I suggested that she could ask for any money to be backdated to the date of assessment. I did not advise her that it would be backdated. She has not understood that the backdated money was awarded and would have been included in the first payment of her direct payment.'

On applying for a refund, Officer 1 stated that:

'I did ask for it to be backdated'

On the minute, Officer 1 stated with reference to Ms C's contribution that:

'I admitted that I did not know enough about this issue at all'

On Ms C's appeal, Officer 1 stated that she was not involved although Ms C telephoned her with advice that she was being helped with it by Social Worker 2.

Social Work involvement

41. Social Worker 2 has noted that she did not visit Ms C because of her difficulty in dealing with strangers and any contact with her was by telephone, in writing or through Officer 1.

42. A statement, prepared by Social Worker 2 when Ms C complained to the Council, confirms that in August 2005 Ms C asked to proceed with her application for direct payments. Also, after Ms C received notice of her contribution, she spoke to Social Worker 2 by telephone about an appeal and an appeal form was sent which she completed and returned. Social Worker 2 has noted that she informed Ms C in writing and verbally that she would be assessed and possibly be charged (her contribution) and what the charge would be would depend upon the hours of care received and her financial assessment.

43. The Council have confirmed that the Organisation's role is one of support to a potential service user about administering direct payments, specifically about advertising and interviewing staff and general advice on employment issues. The Organisation does not have a role or the authority to provide advice about the Council's financial assessment or charging policy and procedure.

(a) Conclusion

44. The Organisation's leaflet describes their role on the Council's behalf as providing support, information and advice to clients of the Council who wish to access direct payments. Their role is clearly defined and I have noted that the Director of the Organisation responded to Ms C that Officer 1 would not have been in a position to advise her, as she claimed, because these were matters for the Council. However, Officer 1's statement (see paragraph 40) confirms that she did give Ms C advice about backdating (refund) and informed her that she may be required to contribute. The key question is whether or not she stepped outside her role and gave advice which was in the Council's domain and did this have unfortunate consequences for the complainant.

45. The Organisation commented that Officer 1 acted to assist Ms C and that any information she gave her was correct. On this basis, it was not accepted that she had suffered financial loss through Officer 1's actions. There is nothing to suggest that the Organisation either did not treat Ms C's complaint seriously or consider the matter thoroughly, albeit they did not accept her version of events or witness statement, which was produced some time after the event. However, the Organisation relied on the recollection of Officer 1 and their knowledge of her expertise in direct payments and, in these circumstances, had no evidence they could draw on to sustain their position. The lack of note taking was a failing and, as has been shown, has had repercussions when it came to answering a complaint about how the matter was handled. The Organisation have assured me that they have implemented improvements and I do not, therefore, have any recommendations to make to address the fault in record-keeping.

46. Given the absence of records, I am unable to reconcile the two differing versions of the event provided by Ms C and Officer 1. However, while I accept that Officer 1 acted with the best intention to assist Ms C, this had consequences and it would have been best to refer the client back to the

Council for advice on issues such as backdating, which were not within her remit. On this basis, I partially uphold the complaint, to the extent that she provided advice to Ms C on issues which Ms C should have been advised to contact the Council about. However, I am pleased to note the Organisation have already put steps in place to ensure the proper recording of meetings and discussions and the Ombudsman has no recommendations to make.

(b) Delay in processing Ms C's application

47. Ms C complained that because there was a lengthy delay in her application being processed by the Council, she had to pay for home help out of her own pocket. I explored whether the time taken was excessive and, if there was delay in processing Ms C's application, how this arose. The period I have concentrated on is between August 2005, when Ms C revived her application for direct payments, and March 2006 when her appeal on her contribution was heard.

48. Social Worker 2's notes record that Ms C submitted a self-referral to the Council for direct payments in mid-August 2005. On 30 August 2005, she spoke to Ms C explaining that, as her original assessment took place six months earlier (February 2005), it had been decided that she should commission an updated assessment and arrangements were being made for an occupational therapist from the community mental health team to call. Her letter of the same date refers to this telephone call and that she might be asked to contribute:

'You have spoken to [Officer 1] and she and I have advised you that, should your application be successful, you may well be asked to contribute, to that end if direct payments are awarded in retrospect, the same will be true or (sic) your contribution.'

49. Ms C stated that she did not receive Social Worker 2's letter of 30 August 2005 and complained that no-one from social work was in contact with her to check if she had received it or followed up with a reminder, which she would have expected given that it was an important letter.

50. Ms C has confirmed that she asked for someone different to carry out the re-assessment of her needs. She commented that she did not refuse to see Social Worker 2 in 2005 but there are notes from October 2005 in the Council's files which show that the social worker was informed by the SAMH (Scottish

Association for Mental Health) worker that Ms C would not allow her attendance for her review.

51. The assessment by an Occupational Therapist took place on 1 November 2005 and Ms C was notified in writing (6 November 2005) that she had been reassessed as requiring 10 hours help per week (although she disputes that she received this letter – see paragraph 24). A financial assessment form was enclosed for completion by Ms C with instructions to send it to Finance (Officer 2). However, before the financial assessment was completed, Ms C received a bill from the Council for the cost of her contribution (from 1 November 2005). The Council accepted that this had been issued in error on the misunderstanding that the service had started already.

52. On 7 December 2005, Community Services sent a letter of agreement to Ms C setting out the direct payment which she would receive and how this would be paid (£91.04 per week plus a one off payment of £190 to cover her initial insurance and payroll start up costs). Advice was given that arrangements would be made to commence payment as soon as her signed agreement had been returned and that:

‘Your Care Officer, [Social Worker 2] will ask you to sign this agreement once you are sure you wish to proceed and will witness your signature.’

53. The Council have informed me that, according to their records, this letter was sent. However, Ms C stated that she did not receive it and there is no evidence that the agreement was signed or that a reminder was sent to Ms C.

54. On 21 December 2005, Officer 1 emailed Social Worker 2 on behalf of Ms C that she wished to know about her financial assessment and what her contribution would be. It was discovered that Ms C had not returned the form, although in her letter of 6 November 2005, Social Worker 2 had asked her to complete and return it as soon as possible. Social Worker 2 recorded in her notes that, as Ms C was reticent about her visiting, she asked Officer 1 to give Ms C assistance if she needed help filling out the form. There is no reference to the unsigned agreement.

55. On 11 January 2006, Ms C received notice of her contribution for 2005/06 based on the financial assessment which she had submitted recently. Ms C appealed against this figure and Social Worker 2 submitted this on her behalf on 20 February 2006 (having transferred the information from the form

completed by Ms C to a new appeal form because Officer 2 had indicated that the original form was out-of-date). The appeal was heard in March when the outcome was an increase in Ms C's contribution (see paragraph 25).

56. Social Worker 2 has commented that she contacted Ms C at 'every appropriate juncture'. However, her notes recorded limited contact with Ms C (between August 2005 and her appeal in March 2006) and that she clearly considered that Ms C required more support than she could give, as she contacted the community care team in November 2005 to try to elicit help. This request was declined on the basis that Ms C had support from a SAMH worker.

57. The Mental Health Team Manager (Officer 3) advised me that there was no key worker in post to cover while Social Worker 1 was on maternity leave but that cover was provided by Social Worker 2, who was in contact with Ms C on a number of occasions. She was satisfied from her own enquiries that Ms C was supported (a caseworker from SAMH was assigned by Social Work Services to work with Ms C and offer her advice and support) and the Organisation would provide advice to Social Work and the client on the employment side of the client engaging a personal carer.

58. Ms C disputes the record of social work services contact with her, or her SAMH worker, and has commented that Social Worker 2 only spoke to her once, although she left messages asking her calls to be returned. Ms C has confirmed that she asked for someone different to carry out the re-assessment of her needs and explained that this was because she was not happy with the original occupational therapist's assessment but stated also that she did not initially refuse to see Social Worker 2. (Notes from 2004 and October 2005 in the Council's files do record that she was not comfortable with dealing with new people visiting and did not wish Social Worker 2 to visit.)

59. Ms C had raised issues about the complexity of the form she was asked to complete and that the information she completed on the original form was wrongly transferred when a fresh (up-to-date) form was completed by Social Worker 2 (resulting in erroneous assessment of her claim for direct payments). Officer 3 explained that the client is given a copy of the completed form and it is their responsibility – or someone acting on their behalf, for example the Organisation – to check the form.

60. The Council have commented that the delay in processing the application between 30 August and 1 November 2005 was due to Ms C's refusal to be reassessed by a community occupational therapist and between 6 November and 14 December 2005 because of her delay in returning her financial assessment. In addition, the process was lengthened by Ms C's refusal to meet Social Worker 2. The period between January and March 2006 covered Ms C receiving notice of the decision on her contribution and appealing against this.

(b) Conclusion

61. Ms C has complained that there was delay in processing her application by the Council. Her health makes her a vulnerable member of society in need of Social Work Services help in making a decision about direct payments. I am critical of the Council's role and the lack of cover provided in the absence of her usual social worker on leave. Officer 3 has advised that no-one was formally placed in this position. Social Worker 2 did provide some cover on an informal basis when called upon but the same level of social work support as her colleague, who was on maternity leave, was not provided and she appears to have recognised that more help was needed by trying to enlist help from other colleagues which was not forthcoming. I believe Ms C suffered because her needs were not fully supported. The Scottish Government Guidance recognises that there will be different levels of need for support. In Ms C's case, I do not consider that she received the support which she required and that this prolonged the process.

62. The Council have a responsibility to ensure that the system they put in place works smoothly and to take action where problems arise. The process at the time was disjointed and notification to Ms C of what she would receive and what her contribution would be were dealt with by different departments at different times. It was not made clear to Ms C that, although she was required to make a contribution, this would be offset completely by direct payments and she would not be worse off as she assumed, having received advice only about her contribution. Once the correct form was completed, her contribution was assessed promptly. However, if she had been in receipt of full information timeously, it would have helped her make a proper decision on whether to accept direct payments and I, therefore, uphold the complaint.

63. Since these events took place, the Council have reviewed and updated their process and have appointed personnel with the specific role of providing advice and assistance. Additionally, they have produced an explanatory leaflet

to complement the leaflet produced by the Organisation. A further review of the procedures is due and I recommend that the Council have regard to the mistakes made in this case when considering change.

64. Ms C has been coping without a home help and, because of the problems she experienced previously and the money she expended without receiving a backdated payment, has been reluctant to apply again to the Council for financial assistance to employ a home help. The Council should take appropriate steps to arrange for her social worker (or someone she is comfortable to call on her) to meet with Ms C and discuss her home help requirements with her. If she wishes to apply for direct payments, the Council should ensure that she is given appropriate support to come to a decision and see her supported throughout the process and after it is implemented.

65. Further, in recognition of the failings in the service which Ms C was offered by the Council and the consequential stress she suffered, it would be appropriate for them to make her a payment. When we make a recommendation for redress, it is with a view to putting the complainant back to the position they would have been if the failure had not occurred, wherever possible and practicable. In having regard to Ms C's wishes, she has sought from the outset for reimbursement of the costs she paid out to a home help from her savings and a sum in recognition of the stress she has suffered. The sum involved to reimburse her (£750) is a reasonable payment and I recommend that this sum is paid by the Council to Ms C with an additional £250 for time and trouble.

(b) Recommendations

66. The Ombudsman recommends that the Council:

- (i) have regard to the failures identified in this report when they undertake their planned review of their direct payments procedure;
- (ii) give appropriate support and assistance to Ms C to help her decide what help she needs to receive in her home and maintain this after implementation of any service offered by the Council;
- (iii) make a payment of £750 to Ms C in recognition of service failure and an additional sum of £250 for time and trouble.

(c) Failure to conduct a proper investigation into Ms C's complaint against the Organisation

67. The Organisation's complaint procedure requires their Director to undertake an investigation into the issues raised and respond within ten working days of receipt of the complaint. If their Director's response is not acceptable to the complainant, then they have the right to ask the Management Board to investigate. Any such request will be dealt with at the next meeting of the Board and the complainant will be advised of the date. The Management Board's decision will be notified to the complainant within five working days of the Board meeting.

68. Ms C complained that the Council did not carry out an impartial and thorough investigation of her complaint about shortcomings in the Organisation's handling of her application for direct payments. She formally complained to the Council's Director of Community Services on 11 January 2007 about the service she received from the Organisation's representative and complained also that the Organisation did not deal with her complaint in accordance with their complaint procedure. The Director of Community Services informed Ms C that the Head of Community Care would arrange for her complaint to be investigated.

69. On 31 January 2007, the Head of Community Care replied to Ms C with advice that she had considered her complaint - and the relevant documents - and discussed the matter with the Lead Officer responsible for overseeing the services provided by the Organisation. She was satisfied that the process adopted by the Organisation in response to Ms C's complaint had been thorough and their replies detailed and that they had acted properly. In the circumstances, she concluded that they could not be held responsible for any financial loss Ms C might have sustained. She maintained this position in further correspondence with Ms C and confirmed that she believed her own investigation was thoroughly conducted.

70. At interview, I asked the Head of Community Care for details of how the Council's investigation was conducted. She explained that complaints are logged on to the system and it is her decision who should conduct the investigation. Once it is completed, she would review the findings and write to the complainant with her decision. She recognised that the complaint process could be more robust and capable of audit but commented that it is under review. In this case, the investigation was conducted by the lead officer, who

has since retired from the Council, and there is no record of how her investigation was carried out. However, the Head of Community Care recalled discussing the case with the lead officer who she stated was 'meticulous' in such matters.

71. The Head of Community Care commented that she had considered whether there were faults and recognised that there had been a problem when an invoice was issued in error but generally she was satisfied with the way both the Organisation dealt with the complaint and their performance.

(c) Conclusion

72. From her own review of the case, the Head of Community Care was satisfied that the Organisation had investigated the complaint properly. However, this has not been backed up with evidence that the correct decision was taken, in accordance with a defined process, rather that it was made on the reliability and experience of the officer who was asked to investigate.

73. There is also a difficulty in coming to a conclusion on how thoroughly the investigation into Ms C's complaint was conducted because the officer concerned has left the authority and the complaint process is neither detailed nor formalised.

74. Without clear guidelines and an audit trail, the Council leave themselves open to criticism about their handling of a complaint. In particular, there is nothing in their replies to show that the Council referred to the Organisation's complaints procedure or made enquiries of the Organisation as part of their investigation which would be expected given the nature of the complaint. In the circumstances, I cannot conclude, with any degree of certainty, that a full and thorough investigation was conducted and this head of complaint is, therefore, upheld.

(c) Recommendation

75. The Ombudsman recommends that the Council as a matter of priority, take steps to implement a complaint process which is open, capable of proper audit and accessible by service users.

76. 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 accepted.

Explanation of abbreviations used

Ms C	The complainant
The Organisation	Support Organisation representing the Council
The Council	The Moray Council
Officer 1	The Organisation's representative
Social Worker 1	Ms C's social worker
Social Worker 2	The social worker who stood in while Social Worker 1 was on maternity leave
Officer 2	Community Care Finance Officer
SAMH	Scottish Association for Mental Health
Officer 3	Mental Health Team Manager

List of legislation and policies considered

Social Work (Scotland) Act 1968