

Scottish Parliament Region: South of Scotland

Case 200703245: Scottish Borders Council

Summary of Investigation

Category

Local government: Social Work: complaints handling; complaints procedures

Overview

The complainants, Mr and Mrs C, complained on behalf of their late son (Mr A) that the Social Work Department of Scottish Borders Council (the Council) had failed to provide him with an appropriate level of support. They pursued this through the Council's complaint procedure and made oral submissions to a Complaints Review Committee (the CRC). The CRC did not uphold their complaint and Mr and Mrs C complained about the CRC's handling of this matter.

Specific complaint and conclusion

The complaint which has been investigated is that the handling of Mr and Mrs C's complaint by the CRC was inadequate (*not upheld*).

Redress and recommendations

Although the complaint is not upheld, the Ombudsman recommends that the Council apologise to Mr and Mrs C for the distress caused by the concerns raised by the CRC about the adequacy of the information provided to them prior to the CRC hearing.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. Sadly, Mr and Mrs C's son, Mr A, committed suicide on 12 September 2006. Mr A had been in custody for eight days. Mr and Mrs C were concerned about the level of support given to Mr A by the Social Work Department of Scottish Borders Council (the Council), who had prepared a Social Enquiry Report (SER) for the Court prior to sentencing and complained to the Council about this. However, they were dissatisfied with the response they received and escalated their complaint through a statutory Complaints Review Committee (the CRC), which was held on 8 February 2008.

2. The CRC report was considered by the Council on 11 March 2008. Following this, the Council wrote to Mr and Mrs C on 19 May 2008 to say they accepted most but not all of the CRC's recommendations.

3. Mr and Mrs C complained to the Ombudsman about the way their complaint had been handled by the CRC. In particular, they were concerned that the CRC accepted in their report that they did not have all the relevant information before them. Mr and Mrs C complained that the CRC, therefore, did not have a proper understanding of the matters which were of concern. They were unhappy that, despite this, the CRC determined their complaint without looking further into the matter. They told the Ombudsman they believed that, as a result, the process was more traumatic than necessary and that little action was taken to minimise this.

4. The complaint from Mr and Mrs C which I have investigated is that the handling of their complaint by the CRC was inadequate.

Investigation

5. In investigating this complaint I reviewed correspondence between Mrs C and the Council, considered the evidence submitted to the CRC and had sight of the CRC minute of the hearing and the minute of the Council committee which considered the recommendations made by the CRC. I made enquiries of the Council and also considered relevant legislation and guidance.

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

Complaint: The handling of Mr and Mrs C's complaint by the CRC was inadequate

Legislation

7. 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 can make recommendations to a relevant Council Committee. The Council is not required to follow the recommendations but if they disregard any of the recommendations they must notify the complainant in writing of the reasons for doing so.

8. Circular 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.

Background¹

9. A fatal accident inquiry (FAI) was held into Mr A's death. Following this, Mr and Mrs C raised a number of concerns with the Council, including the way the SER had been prepared; issues around the difficulties they had had accessing information and documents relating to Mr A and the quality of these once they were obtained; and matters relating to communication and support provided to them and the Prison Service. They were also concerned about the way social work staff had responded to questions during the FAI.

10. The Council responded to these concerns on 6 December 2007 and advised Mr and Mrs C that actions would be taken in response to certain problems they had identified and accepted. An apology was made for the last minute cancellation of an appointment and for distress caused. However, Mr and Mrs C remained concerned and asked for a CRC to be held to consider their complaint.

The CRC

11. 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

¹ The focus of this report is the work of the CRC. Detail on the substance of the complaint is only included where necessary to ensure this is understood.

failure by the CRC. In the absence of these, the CRC retain the right to exercise their own judgement on the complaint raised before them.

12. A letter was sent by the Council to Mr and Mrs C on 18 January 2008, informing them of the day and time of the CRC hearing. Mr and Mrs C were informed that an agenda and papers would be circulated seven days prior to the hearing and that they could submit papers for circulation.

13. The CRC was held on 8 February 2008. The minute shows that the following papers were circulated prior to the meeting: procedure note; complaint timescale; letter from Mr and Mrs C dated 16 September 2007; letter from the Council dated 6 December 2007; and letter from Mr and Mrs C dated 4 January 2008. Mr and Mrs C both attended the hearing.

14. On 18 February Mr and Mrs C received a letter setting out the conclusions of the CRC. These were listed A to F (see Annex 3 for a summary of the conclusions and recommendations of the CRC). Conclusion A said that the materials provided prior to the CRC had been inadequate. The full minute of the CRC with conclusions and recommendations was sent to Mr and Mrs C on 7 March 2008. The minute set out a summary of the oral evidence which had been obtained. This showed that Mrs C had raised her concerns on the evidence given to the CRC about her complaint at the hearing and that she had been asked to provide further detail.

15. In the course of the investigation, I obtained a copy of the handwritten notes of the CRC hearing. These recorded that, at the conclusion of the taking of evidence, a CRC member was noted to have praised Mrs C for the articulate way in which she had provided further information.

16. The minute of the CRC hearing was first considered by the Council's Executive Committee on 11 March 2008. They established a working group to consider the recommendations in detail and the working group submitted a further minute to the Executive Committee on 18 April 2008. They considered this on 29 April 2008.

17. On 19 May 2008 the Council wrote to Mr and Mrs C to say that they accepted some of the CRC's recommendations². These committed them to

² See Annex 3 for details of the recommendations.

ensuring that: a summary of the background to a complaint, relevant documents and reports be submitted by the Social Work Department and issued with the agenda of a CRC; and also that either the CRC or the complainant could request further information be submitted prior to the meeting. The Council also broadly accepted a recommendation that a formal note be kept of all conversations between social workers and relevant parties but not the part of the recommendation which said the note should be agreed by both parties. No reason was given for this in the letter but, in response to my enquiries, the Council explained this was an oversight and a reason should have been recorded. They said the reason was that, while they accepted notes should be kept, they felt that it would be impractical to ensure these were agreed by all parties. They did not accept two other recommendations and brief reasons were given for this. They said they could not accept a recommendation that the arrangements for the release of papers be reviewed, as the initial decision not to release had been made on legal advice. They also said they could not accept a recommendation that each SER should accompany prisoners to prison given that, once it had been submitted, the SER was controlled by the Sheriff. The Council, however, said they would write to the local Sheriff Principal to see how they could improve the situation.

18. In response to my enquiries, the Council explained the reasoning behind the decision to submit only a limited number of documents to the CRC. They said this was in line with their normal policy and that, at the time, the Social Work Department had felt this was sufficient. They said that on the day of the hearing, the CRC, at their request, had been provided with copies of the FAI report and the SER and these were considered during their private deliberations. In line with Council practice, while the conclusions were noted in the minute, the deliberations were not.

19. As well as responding to my questions, the Council submitted additional comments. They said that as a result of this complaint they were reviewing the training available to CRC members and would also now hold a session for members prior to each CRC hearing to ensure that they were fully briefed. They were developing a leaflet to ensure members of the public were aware of the scope, remit and powers of the CRC, as well as the process. They said that response letters now offered complainants the opportunity to discuss the case with a senior manager before proceeding to a CRC. They also said that, in future, the Council's letters about the CRC recommendations and the subsequent decision would be clearer.

Conclusion

20. In considering Mr and Mrs C's complaint about the CRC, the role of the Ombudsman's office is to consider whether there is evidence of maladministration or service failure in the administration of the CRC and procedures followed (see paragraph 11). The main concern raised by Mr and Mrs C about the CRC was the conclusion by the CRC that, prior to the hearing, they had inadequate information. It is this matter which has been the focus of the investigation and not the substance of the complaint which Mr and Mrs C brought to the CRC.

21. I fully understand why the statement by the CRC criticising the information prepared for them by the Social Work Department caused Mr and Mrs C concern. While there is no obligation on the CRC to provide reasons for their recommendations, it is not clear from the list of conclusions and recommendations given to Mr and Mrs C why the CRC considered, despite this criticism, that they had sufficient information at the end of the hearing to make recommendations.

22. It is, however, clear that the CRC asked for and noted they received additional documents prior to their deliberation. From both the formal minute and the hand-written note I have seen, it is also evident that Mrs C did provide the CRC with detailed information about her complaint and that the CRC were impressed with the way Mr A's family presented their complaint. In particular, Mrs C had raised the question of the adequacy of the documentation and, in response to this, further questions were asked. Therefore, while it may have been helpful if the CRC had made it clear why they felt they had sufficient evidence to come to a decision despite their criticism of the Social Work Department, there is evidence that they actively sought out the information they required during the hearing and that this was available to them during their consideration. Therefore, in all the circumstances, I have decided not to uphold this complaint.

23. I am also pleased to note the Council have agreed to take action in response to this complaint to ensure that better information and support is provided in the future. They have also explained that not including a reason for the amended recommendation was an oversight and, in the context, the reason was largely self-evident.

24. While I have not upheld Mr and Mrs C's complaint, given the sensitive nature of the complaint being considered by the CRC and the fact that the CRC itself criticised the Council for the failure to provide them with all relevant documentation prior to the hearing, the Ombudsman considers it is appropriate to make the following recommendation.

Recommendation

25. The Ombudsman recommends that the Council apologise to Mr and Mrs C for the distress caused by the concerns raised by the CRC about the adequacy of the information provided to them prior to the CRC hearing.

26. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

Explanation of abbreviations used

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| Mr and Mrs C | The complainants |
| Mr A | Their late son |
| The Council | Scottish Borders Council |
| SER | Social Enquiry Report |
| CRC | Complaints Review Committee |
| The Directions | The Social Work (Representations) (Scotland) Directions 1996 |
| The Guidance | Circular no SWSG5/1996 |
| FAI | Fatal Accident Inquiry |

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)

The conclusions of the CRC included:

- the materials provided to the Committee prior to the Hearing had been inadequate on this occasion, In particular the Fatal Accident Inquiry Report and the Social Enquiry Report were only tabled at the meeting and only when specifically requested by the Committee

Recommendations of the CRC

- that a summary of the background of the complaint along with all relevant documents and reports be submitted by the Social Work Department for issue with the agenda;
- that when background papers have been issued with an Agenda to the Social Work Complaints Review Committee the Appellant and members of the Committee may request, if required, further information to be submitted prior to the meeting;
- that although papers were eventually released to the family, albeit late, that in light of that, the process for releasing information in a timely manner be reviewed;
- that formal notes of all conversations between social workers and all relevant parties be documented, agreed by both parties at the time, and placed on the clients social work case file.
- that Social Enquiry Reports accompany all prisoners to prison.