

**Case 200600993: East Dunbartonshire Council**

**Summary of Investigation**

***Category***

Local government: Social Work: complaints handling

***Overview***

The complainants (Mrs C and Ms B) raised a number of concerns regarding the handling of their complaint by East Dunbartonshire Council (the Council). The complaint submitted to the Council related to care services provided to Mrs C's parents.

***Specific complaints and conclusions***

The complaint which has been investigated is that the Council failed to handle the complaint made by Mrs C and Ms B properly (*upheld*).

***Redress and recommendations***

The Ombudsman recommends that the Council:

- (i) reflect on how they handled this complaint and the specific failings identified in this report and remind staff of the importance of communicating effectively on such matters; and
- (ii) apologise to Mrs C and Ms B for failing to make it clear to them that the Complaint Review Committee meeting was not being formally minuted and for failing to inform Mrs C that not all of her comments would be submitted to the Social Services Committee.

## **Main Investigation Report**

### **Introduction**

1. On 1 September 2006, the complainants (Mrs C and her daughter Ms B) submitted a complaint to the Ombudsman relating to the way in which their initial complaint about care provided by East Dunbartonshire Council (the Council) to Mrs C's parents (Mr and Mrs A) was handled. Mrs C and Ms B had already pursued their complaint about care provision through the full Social Work Complaints Procedure of the Council which culminated in a Social Work Complaint Review Committee (CRC) Hearing on 4 August 2005.

2. Mr and Mrs A were receiving care services from the Council whilst living in the community and, subsequently, when they resided in care homes. Mrs C and Ms B complained to the Council about the quality of care Mr and Mrs A received. Furthermore, Mrs C and Ms B complained to the Scottish Commission for the Regulation of Care (the Care Commission) about the care provided to Mr and Mrs A. The Care Commission upheld the complaints against the Council and identified failings in the care provided. At the CRC, some of Mrs C and Ms B's complaints were fully upheld, others partially upheld and some aspects were not upheld. A number of recommendations for improvement were made by the CRC.

3. The complaint from Mrs C and Ms B which I have investigated is that the Council failed to handle their complaint properly. In particular, the complainants were concerned that the CRC hearing was not formally minuted, contrary to their understanding that it would be; and that Mrs C's written comments on the CRC's recommendations were not conveyed to the Social Services Committee (SSC) as she had expected.

4. It is important to note that the remit of my investigation is not to assess the quality of care services provided by the Council to Mr and Mrs A. This task has already been undertaken by the Care Commission, which found that the services provided were not of an acceptable standard. The focus of this investigation has been to assess whether or not the Council handled the complaints made by Mrs C and Ms B in line with the relevant Complaints Procedure.

## **Investigation**

5. Prior to outlining my investigation, I must point out that this report deals with issues which occurred a number of years ago and much has changed since that time. For example, the Council's Social Work Complaints Procedure has been reviewed. I can appreciate that the Council, and possibly also Mrs C and Ms B, may be frustrated at these issues being looked at now given the length of time which has passed. However, I have had to consider the evidence carefully and determine how the Council acted at the time of the complaint. In conducting my investigation, I obtained and considered the following evidence:

- all relevant complaints correspondence, including internal communication;
- written evidence from the Council giving their view of how the complaint was handled;
- the Council's Social Work Complaints Procedure (and the relevant legislation); and
- written evidence from Mrs C, giving her views relating to the handling of the complaint.

6. In addition, in reviewing a draft report of this investigation, the Ombudsman had a telephone conversation with Ms B to discuss the case.

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

### **Complaint: The Council failed to handle Mrs C and Ms B's complaint properly**

8. The manner in which a complaint about Social Work Services should be handled is laid out in the Council's Social Work Complaints Procedure. This procedure derives from a national statutory framework, *The Social Work Representations Procedure (Scotland) Directions 1996* (the Directions). Having reviewed the evidence on file, I note that during the CRC hearing, the Council accepted that their handling of the complaint up until that point had been poor. Issues such as poorly managed meetings and numerous failures to respond to correspondence were identified during the CRC hearing. The Council accepted that serious failings had occurred and the Head of Social Work Services offered an unreserved verbal apology to Mrs C and Ms B. Mrs C felt this apology was not sincere and that the Council's approach to her complaint was an attempt at 'damage limitation'. Mrs C has stated that she felt that the complaint was never

viewed by the Council as something which could be resolved and, as such, they took, in Mrs C's view, a defensive position.

9. The CRC heard evidence not only relating to care provision but also relating to the handling of the complaint made by Mrs C and Ms B. Whilst, as stated above, the CRC identified the issues regarding the complaint up until that point, the complainants subsequently raised with this office issues with regard to the manner in which the CRC was conducted and how Mrs C's written comments, which she understood would be presented to the SSC, on the CRC's decision were handled.

10. There were two main issues which have been identified by the complainants. Firstly, they argued that the CRC hearing was not formally minuted and this prevented an accurate record of the hearing being taken. They were of the view that a formal minute should have been taken, given the importance of the hearing and the seriousness of the complaint matter. The complainants were clear that it was their understanding that the hearing, which they both attended, would be formally minuted.

11. The Council have confirmed that the hearing was not formally minuted, however, a detailed note was taken which the CRC members then used in their consideration of the complaint. When considering how the Council managed the complaint, including the CRC, I took account of the Directions which state:

**'Status of Reviews**

CRCs must be conducted formally and have regard to generally accepted procedures which accord with natural justice. They should, while considering the basis of a complaint, take any opportunities which arise to resolve it. CRCs should not, therefore, develop a degree of formality or inflexibility that may inhibit the objective of facilitating a resolution.

CRCs should consider not only the manner in which decisions have been arrived at, but also decisions about assessment and service provision made on the basis of local authority policies or the professional judgement of local authority staff. Where independent professional advice has been sought by the CRC, details of this should be provided to the committee responsible for social work with their recommendations.

In considering recommendations from CRCs, local authority Committees responsible for social work matters should have regard to the standing of

CRCs and only reject recommendations in exceptional circumstances. Where such a local authority committee does disregard the recommendations of a CRC the local authority must ensure that the reasons are published in the committee minutes and given to the complainer in writing with advice on what further steps may be taken with regard to the complaint.'

12. Mrs C was dissatisfied with the Council's response on this aspect of her complaint. Ms B said that she and her mother had asked the Council if the meeting could be tape-recorded. Although the Council did not agree to this request, they told her and her mother that minutes would be kept instead. Ms B said that the issue regarding the minutes was extremely important to her and her mother as they were concerned that if full minutes were not kept, the actions which were agreed following the complaint they made about the care of her grandparents may not be delivered. They wanted to ensure that the same thing did not happen to another family.

13. Following receipt of a first draft of this report, Mrs C decided to contact members of the CRC to ascertain their understanding of whether the meeting was being minuted or not. She wrote to three members, two of whom responded to the effect that they thought the meeting was being minuted. One member said, 'My recall is that the proceedings were minuted by a member of the administrative staff'; the other said, 'My recollection is that there was a member of [the Council] administrative staff present at the hearing and it was her responsibility to take minutes of the proceedings for the duration of the meeting'.

14. Mrs C was further aggrieved because the Council did not provide her with a copy of the notes of the meeting. She only obtained a copy after they were made available to this office.

15. The second aspect to be considered is how the complaint made by Mrs C and Ms B was managed once the CRC was completed. Specifically, once the CRC reached its conclusions and made recommendations for improvement, Mrs C was, in line with standard practice, afforded the opportunity to provide written comments on the CRC's recommendations. The Council, in providing evidence in relation to this aspect of the complaint, highlighted that the Social Work Complaints Procedure affords the complainant the right to comment on the recommendations of the CRC only.

16. Mrs C felt aggrieved as, following an invitation from the Council to provide comment on the recommendations of the CRC, she submitted detailed and extensive comments, which included comments not specific to the CRC recommendations. The Council, upon receipt of Mrs C's comments, confirmed that they had received them and that these would be presented to the SSC for consideration when determining whether or not to accept the CRC's recommendations.

17. Upon considering the comments received, the Council decided that the vast majority of comments made by Mrs C were not relevant to the CRC recommendations. As a result, the Council passed some of Mrs C's comments to the SSC, but not all of them. The Council did not advise Mrs C that they had taken this action and she only became aware of it when she attended the SSC meeting which was considering the CRC's findings. Mrs C claimed that this was evidence of the Council obstructing her right to have her complaint heard fairly.

#### *Conclusion*

18. Firstly, with regard to the CRC not being minuted, I have taken account of the provisions of the Directions and I have also considered the Council's Social Work Complaints Procedure which was in use at the time of the complaint. I note that there is no requirement placed upon the Council to formally minute the CRC. However, I am aware that other local authorities do take a formal record of CRC hearings and I would encourage this approach as representing best practice.

19. The Council have discretion as to how they implement and manage their policy. They have drawn to my attention the fact that the Social Work Complaints Procedure does not mention or indicate that the CRC will be formally minuted. The Social Work Complaints Procedure stated:

'Following the Panel there will be a Report of the deliberations comprising a report on the evidence taken, and the Panel's recommendations to the Social Services Committee. After the report is completed the clerk will issue the findings to the Head of Social Work and Joint Ventures and the complainant and seek immediate comments in writing upon the recommendations only.'

20. The Council's position, therefore, is that they were not required to take a formal minute of the CRC hearing. I accept that, by ensuring notes were

recorded and by providing a report to the SSC on the evidence taken and the recommendations made, the Council were complying with the relevant guidance. However, it is clear that Mrs C and Ms B were of the view that the meeting was being formally minuted. Their understanding is supported by members of the CRC, who also thought the meeting was being formally minuted. I conclude, therefore, that the Council failed to communicate clearly the fact that (a) they were not required to take a formal minute of the CRC hearing; and (b) that no such minute was being taken.

21. The Council's failure to provide Mrs C and Ms B with a copy of the notes which were taken further exacerbated the situation. Given that both Mrs C and Ms B were participants at the CRC hearing, I consider it would have been good practice to have shared the notes with them. I am critical of the Council in this regard.

22. I turn now to the issue of withholding Mrs C's comments from the SSC. In providing evidence on this point, the Council have pointed out that both correspondence with Mrs C and the relevant policy highlighted the fact that only comments made on the CRC's recommendations would be presented to the SSC. I fully acknowledge this and confirm that it is my view that the Council, in not providing Mrs C's full comments, acted in accordance with the standard procedure. Having considered the comments, it was the Council's opinion that they did not relate to the CRC's recommendation.

23. The fact remains, however, that Mrs C submitted detailed comments which the Council, in sending a standard acknowledgement letter, confirmed would be presented to the SSC. Upon reviewing Mrs C's comments, the Council decided that only a small selection of Mrs C's comments would be put to the SSC. The Council, by not advising Mrs C that a revised version of her comments would be presented to the SSC, effectively failed to keep Mrs C informed of the development that an edited version of her comments would be passed to the SSC. It is my view that, given the earlier failings identified by the CRC and the Care Commission, the Council should have ensured that Mrs C's complaint was handled to the highest possible standards. The Council have acknowledged to me that it would have been courteous to have advised Mrs C that her full comments were not being presented to the SSC. I do not consider that this recognition goes far enough. The failure to advise Mrs C of the fact that her comments would not be presented in full, after she had been wrongly advised that they would be, had an impact on Mrs C's faith in the Council to handle her

complaint fairly and openly. I am of the view that, had the Council advised Mrs C that not all of her comments would be presented and explained why, the complaint relating to the handling of Mrs C's comments would more than likely have been resolved at that stage. The evidence on file, including the tone of correspondence, indicated to me that the complaint was moving towards a conclusion at that point.

24. In summary, it is my view that the Council adhered to their procedures when handling the case, however, they failed to make it clear to Mrs C and Ms B that the CRC was not being formally minuted and they also failed to keep Mrs C fully advised of important developments at the final stages of the process. I believe that these failings in communication had a detrimental effect on the outcome of the entire complaints process in terms of resolving the complaint and served to undo, to an extent, the progress made throughout the complaints process. In all the circumstances, I uphold this complaint.

#### *Recommendations*

25. Given that the Council acted in accordance with their standard practices, the Ombudsman does not recommend changes to the Complaints Procedure but does recommend that the Council:

- (i) reflect on how they handled this complaint and the specific failings identified in this report and remind staff of the importance of communicating effectively on such matters; and
- (ii) apologise to Mrs C and Ms B for failing to make it clear to them that the CRC meeting was not being formally minuted and for failing to inform Mrs C that not all of her comments would be submitted to the SSC.



**Explanation of abbreviations used**

Mrs C	The complainant
The Council	East Dunbartonshire Council
Mr and Mrs A	Mrs C's parents
Ms B	Mrs C's daughter
CRC	Social Work Complaints Review Committee
The Care Commission	Scottish Commission for the Regulation of Care
The Directions	The Social Work Representations Procedure (Scotland) Directions 1996
SSC	Social Services Committee

**List of legislation and policies considered**

Social Work Complaints Procedure

The Social Work Representations Procedure (Scotland) Directions 1996