

Case 200700596: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Social Work; care in the community

Overview

Ms C complained that in 2007 the respite care that was offered by The City of Edinburgh Council (the Council) for her teenage daughter (Miss A), who has complex special needs, did not meet her daughter's assessed needs.

Specific complaint and conclusion

The complaint which has been investigated is that, in 2007, the respite care offered by the Council did not reasonably meet the assessed needs of Miss A (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. Ms C is the mother of and the primary carer for her daughter (Miss A), who is currently aged 17-years-old. Miss A has complex special needs. She has epilepsy, cerebral palsy, is physically disabled, visually impaired and has significant learning difficulties. Ms C also cares for her son, currently aged 12-years-old, who has a number of health difficulties and the condition dyspraxia. Ms C also has a history of ill health.

2. Currently Miss A attends a special needs school in Edinburgh (the School) as a day pupil. She also spends two nights per week, term time only, at the School's respite facilities. The respite care is funded by The City of Edinburgh Council (the Council). The cost of one night is funded by the Children and Families Department (the Department) through their Section 23 budget. The Section 23 budget funds packages for families with children with disabilities in Edinburgh. The second night is funded by the Out of Authority Panel (the OAP), a panel with a separate budget which funds requests on behalf of children who require residential school placements.

3. In 2005 Ms C sought to have the Council fund respite care for four nights per week throughout the year at the School, an additional two nights to those already funded by the Council. Ms C said this was needed so that she could be better supported in her caring role as Miss A's mother and primary carer and because of her daughter's changing needs, as she had grown. In addition, Ms C said her son had special educational needs and health issues and also needed her attention. Furthermore, her own health was deteriorating.

4. The request for an additional two nights respite care at the School was refused by the Council. The reasons for this were given in a letter from a Council Service Manager to Ms C dated 14 October 2005. The letter stated that the decision of the OAP was that it would not be appropriate to fund these additional overnights on the basis that an alternative care package was already on offer which would meet Miss A's needs for the additional two nights respite. Following a request from Ms C and one of two representatives from a voluntary organisation who have assisted her (the Advocate), the OAP reconsidered Ms C's request at a meeting of the OAP on 17 November 2005. However, the OAP held that, while they accepted that Ms C's preferred option for increased respite care at the School would offer a more consistent set of arrangements for

Miss A than the care package which had previously been offered, they regretted that because of a number of other pressures and priorities, it had not been possible to fund additional overnights of respite care for Miss A from the Out of Authority budget.

5. Ms C then complained to the Council that her request for additional respite care at the School had been refused on cost grounds and that no acceptable alternatives had been offered. A Social Work Complaints Review Committee (the CRC) was held on 8 February 2007. The CRC considered three issues, which were in relation to 1) a claim for payment of an outstanding bill to the School for one night emergency respite care following the death of Ms C's uncle (the complaint was upheld); 2) the decision by the Council to withdraw from the use of the School for respite care (the complaint was not upheld); and 3) allegations of verbal abuse by Ms C towards a member of the Council's staff (no action was to be taken).

6. The Ombudsman office's investigation concerned only the complaint regarding the decision by the Council to withdraw from the use of the School for future respite care. The CRC, following their decision not to uphold this complaint, agreed (a) that, in the best interests of Miss A, there should be further dialogue between the parties and (b) recognised the principle involved that awards should be decided first on the child's needs and only then relative to budgetary constraints.

7. Ms C was dissatisfied with the Council's response and, thereafter, she brought her complaint to the Ombudsman's office. The complaint throughout has been conducted on Ms C's behalf by representatives by the Advocate.

8. The complaint from Ms C which I have investigated is that, in 2007, the respite care offered by the Council did not reasonably meet the assessed needs of Miss A.

Investigation

9. In order to investigate the complaint, all of the complaint correspondence between Ms C, the Advocate and the Council and between the Council and Ms C's elected representatives was reviewed. The Council's case files were reviewed at the Council's offices and correspondence was entered into with the Advocate and the Council. To assist with the investigation, meetings took place

with Ms C and the Advocate and separately with several of the Council's officers.

10. I very much regret that the process of investigating this complaint has taken much longer than it should have done. For that, I apologise to Ms C, Miss A and the Council.

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

Complaint: In 2007, the respite care offered by the Council did not reasonably meet the assessed needs of Miss A

12. On 13 April 2006 the Advocate, on behalf of Ms C, complained to the Council that Ms C had been attempting to get an additional two nights respite care per week at the School, in addition to the two nights per week she currently had at the School for Miss A, but had been consistently turned down for this.

13. On 25 August 2006 the Advocate, on behalf of Ms C, wrote again to the Council. The letter stated that a request for two additional nights of respite care at the School had been refused on cost grounds and no acceptable alternatives had been offered. The Advocate said that Ms C had consistently asked for a further two nights per week respite at the School, in addition to the two overnight stays per week she currently had. This had been refused by the Council despite letters of support from Miss A's medical consultant and her educational psychologist. Ms C had been advised that the OAP had made a decision in October 2005 that Miss A could not have the additional respite care as there was an alternative package on offer. This package was two additional nights respite at a residential centre for children with disabilities run by a childrens charity in Edinburgh (the Centre).

14. The Advocate stated that Ms C was refusing the offer of an additional two nights respite per week at the Centre because Ms C was concerned that the facilities were not appropriate for her daughter's high level of need. Ms C said there were no lifts, she felt that the staff were not trained to deal with children with her daughter's level of disability, and she did not want male carers looking after her daughter. Also the two nights offered were on Wednesdays and Sundays and as Miss A already attended the School on Mondays and Thursdays this meant a considerable amount of moving around for her daughter

and would be too upsetting for her. The Advocate also stated that Miss A was of the view the Council had not argued that respite care was not needed but in offering an alternative package of respite care failed to take into account whether it was appropriate to Miss A's needs.

15. In addition to the complaint from the Advocate, on behalf of Ms C, the documents provided to me by the Council show that the Council also received letters from a number of Ms C's elected representatives on her behalf.

16. In a letter to one of Ms C's elected representatives, dated 29 August 2006, the Department's Director (Officer 1) stated there had been a number of occasions where Ms C had expressed dissatisfaction with the service being provided from the Department. This had resulted in frequent disagreements about assessment outcomes and the level of service that could be offered within budget and resource limitations. Officer 1 added that the budget was finite and had to be carefully managed to meet the needs of Edinburgh children with additional support needs. The School's fees were very high compared to other like services. As a result the Department could only use the School respite services in very exceptional circumstances. Having reviewed the circumstances of the case Officer 1 felt the decision taken was appropriate.

17. On 6 October 2006, the Department's Head of Service Development (Officer 2) wrote to the Advocate. This was in response to the Advocate's letter of complaint, on behalf of Ms C, dated 25 August 2006. The letter stated that the Council were not currently purchasing respite care from the School due to the comparatively high costs. The Council administered a finite budget which required to be financially managed in a prudent and effective manner. There were in house provisions which catered for children like Miss A and the Council would always look to utilise its own services in the first instance. All other respite options were, therefore, exhausted before the School was considered and their service was only purchased in 'life and limb' situations (such as child protection).

18. Officer 2 continued that it should be noted that when Ms C originally sought two additional nights of respite care for her daughter there was only one respite night in place. Subsequently, a decision was taken to grant an extra night of respite care so the provision did increase from one to two nights. If a further two nights were now to be granted this would mean that Ms C would be receiving respite care four nights per week for her daughter. Miss A could then

meet the criteria for 'Looked After and Accommodated' status (see paragraph 33 of the report).

19. Officer 2 also stated that previously the Centre had been put forward by the Resource and Allocation Panel (the RAP) as an alternative respite provision to the School. Ms C did visit the facility but raised concerns about issues such as accessibility and staff training. Accessibility was never an issue because although the building did not have a lift it was made clear to Ms C that only children with full mobility would be offered accommodation in the upper floor and that Miss A would reside on the ground floor. The Centre's staff were trained to deal with the individual needs of each child and had experience of caring for children with a higher level of need than Miss A.

20. The Advocate, on behalf of Ms C, replied by letter dated 1 November 2006. The Advocate stated Ms C's dissatisfaction with Officer 2's response and raised a number of points. In particular, the Advocate said that Ms C was of the view that there were no appropriate Council services for her daughter and she was, therefore, pursuing the case for further respite care at the School. Ms C was clear she did not want full-time residential care for her daughter. The tariff and the amounts quoted for the cost of respite care at the School were not correct. The reasons why the Centre was not a suitable alternative for her daughter was because the bathrooms were upstairs and there were no hoists in the room. Two nights at the Centre would provide a fragmented package of care which would be detrimental for her daughter.

21. A letter, dated 29 November 2006, from Officer 2 to the Advocate disagreed with Ms C's assertion that there were no suitable Council services for Miss A. Officer 2 stated that she believed that there were appropriate respite care resources available for Miss A at the Centre. The Centre had a history of working with children with similar needs and were at that time working with a child with similar needs to Miss A. The Council's resources had been assessed on a quality and cost effective basis and had been identified as delivering best value within the parameters of the financial resources available. Only in 'life and limb' situations, such as child protection, would the services of the School be considered. The Centre always had hoists available which were in constant use. The facility also had a large ground floor adapted bathroom which would have catered for Miss A's needs.

22. Ms C then took her complaint to the CRC. The Department, in their submission to the CRC, stated that they believed they had carried out an 'exhaustive and thorough' examination of the complaint. Two midweek nights of respite care at the School per week were currently provided. Additional respite care services were not presently being purchased from the School on the grounds of cost effectiveness, this decision had been made at a senior management level within the Council. Alternative respite provision from the Centre which had already been commissioned from their voluntary sector partner had been assessed as suitable for Miss A's needs. However, Ms C had declined the opportunity to use the service.

23. The Department also stated, in their submission to the CRC, that the management of the Council's disability/respite budget had to be managed on a strict cost-effectiveness basis, due to the service demands and financial constraints placed upon it. Miss A's needs had been prioritised alongside that of all other Edinburgh children affected by disability. The Department felt it had identified and introduced a package of care which could best address Miss A's needs, based on the financial budget at its disposal.

24. A copy of the report of the CRC held on 8 February 2007 has been supplied by the Council. The report records that Ms C and the Advocate were present and contributed to the hearing. Ms C, when asked whether other respite arrangements had been discussed with her, indicated that a Section 23 Assessment (an assessment by the Council of a child with or affected by disabilities and their main carers which records their needs) had been completed and that the social worker had discussed other respite arrangements with her. Ms C indicated that it was her view that the School was the best place for her daughter. She said that Miss A knew people there and could play with other children. She added that everyone including her psychologist and paediatric consultant supported the use of the School in these circumstances.

25. The report also records that there was a discussion about the cost implications of using the School and Ms C and the Advocate were 'tested' on the figures for the costs submitted in support of Ms C's case. The Advocate was of the view that cost implications had been at the heart of the Council's decision. The Department denied that the decision not to use the School had been based on cost. The Advocate further alleged that what was being offered to Ms C and her daughter was a fragmented care package which fell short of

generally accepted standards. She noted too that Ms C was still arguing for two extra nights care at the School for Miss A.

26. The finding of the CRC with regard to the decision to withdraw from the use of the School was that the complaint be not upheld. The CRC (a) took the view that, in the best interests of Miss A, there should be further dialogue between the parties; and (b) recognised the principle involved that awards should be decided first on the child's needs and only then relative to budgetary constraints.

27. As referred to in paragraph 24, the needs of young people, such as Miss A, with disabilities and their families are outlined in what is known as a Section 23 Assessment. According to the Council, a Section 23 Assessment records the needs of young people with disabilities and their families and represents a record of the Council's work with them and the Council's understanding of the young person's needs. A Section 23 Assessment is an ongoing assessment of those needs. It also provides information for the relevant service manager and helps to prioritise the needs of all young people with a disability in Edinburgh. The Council said that such assessments are updated as and when required, usually when there is a change in circumstances. The relevant service manager had access to sets of funds alongside respite services to meet the needs outlined in assessments. These sums are limited and require to meet the needs of all young people with or affected by disabilities and their families.

28. The Council's case files for Miss A show that there were two Section 23 Assessments for the relevant period I am investigating. These have been supplied to me by the Council. One of the assessments records that, in the Council's view, there was 'a high level' of respite package of care in place for Miss A as follows: two overnights per week respite care at the School, term time only; school holiday respite at a carer's home; a home based care service once per week; a home help two hours per week; personal care support for help with transferring and bathing Miss A twice per week and a play scheme for two weeks in the summer holidays.

29. The Council have also provided information about the Centre. According to the Council, the Centre could accommodate and meet the needs of Miss A. The Centre had been used for a number of years. In addressing the concerns and objections raised by Ms C about the facilities and the staff at the Centre,

the Council officers from the Department stated that staff there were highly trained and were used to caring for young persons, such as Miss A, with profound disabilities. They were satisfied that the Centre could cater for Miss A's needs and had comparable accommodation to that provided by the School. In particular, there was ground floor accommodation with bathroom facilities on the same floor and suitable hoists. Albeit the building was an older building, it was assessed to have been suitable to meet the needs of Miss A as it catered for young people with profound disability and wheelchairs. Further, the Centre had since moved to a new purpose built building which could cater for Miss A's needs.

30. The Ombudsman's office also made written enquires of the charity which operates the Centre. In their written submission to the Ombudsman's office, the charity stated that they assured Ms C that they could cater for her daughter's needs. They confirmed that, when Miss A was considered for the Centre, there was a bathroom and a manual hoist that was suitable for young people, such as Miss A, with complex physical needs. At the time they were supporting another young person who had complex physical needs like Miss A.

31. According to the Council, there was a finite budget and they had to take into account the needs of all young people with disabilities and their families in Edinburgh. The Council already had in place a long standing agreement with the Centre, which had been in place at least since 2005. A copy of the document confirming this was supplied by the Council. The School had increased their costs without any dialogue or discussion with the Council. They had also calculated that, despite what Ms C had claimed, the School was not a less expensive alternative to the Centre unless used solely midweek.

32. Young persons, such as Miss A, who were currently using the School for respite were allowed to continue there and be funded by the Council but no funds were to be allocated for any new respite care at the School. The decision to stop using the School for future respite care, except in 'life and limb' circumstances, applied to all young persons with disabilities and not just Miss A.

33. The Council further stated that if Ms C had received respite care four nights per week for her daughter then Miss A would have legally met the criteria for 'Looked After and Accommodated' status because she would have been receiving on aggregate more than 120 nights per year care out with the family home. The legal basis for what is defined as 'Looked After and Accommodated'

status is contained within the Children (Scotland) Act 1995. Not only would this have impacted on Ms C's eligibility for state benefits but, more importantly, the Council's view was they would have had to reconsider the whole package of care provided for Miss A, in particular, if four nights in a residential setting was appropriate for and in the best interests of Miss A's needs. It might have been that specialised foster care would be more appropriate for and in the best interests of Miss A with foster parents caring for Miss A for the majority of the time.

Conclusion

34. This was a very emotive complaint to investigate. I fully recognise the very difficult, demanding and stressful circumstances that Ms C must find herself in caring for and meeting the needs of her daughter. I also recognise that she too has to meet the needs of her son and has her own ongoing health problems. I can, therefore, understand the reasons why Ms C sought and continues to seek the increase in overnight respite care.

35. It is clear from my review of the Council's files (a substantial number of documents), the written information supplied to me by the Advocate and also from the discussions with Ms C and the Advocate and the Council's officers that there has been and continues to be considerable involvement by the Council with Ms C and her family, in particular, in relation to the care of Miss A.

36. Ms C's dispute with the Council is in relation to the number of nights of respite care which the Council should fund and where that overnight respite should be. Ms C sought two additional nights respite at the School in addition to the two nights at the School which the Council already funded. The Council were prepared to fund additional respite care but at the Centre which was unacceptable to Ms C.

37. From my discussions with the Council and all of the information supplied to me by the Council and the charity which operates the Centre, I am satisfied that the Council had adequately addressed the concerns raised by Ms C about the Centre, in particular in relation to accommodation and the competency of staff. One of Ms C's particular concerns about the staff at the Centre was that she did not want male carers looking after her daughter. The charity in their written submissions to the Ombudsman's office has stated that female carers would have worked with Miss A. In exceptional circumstances, if a male member of staff was to be involved then they would only have acted as the second member

of staff and a female member of staff would always carry out intimate care. If such a situation was unacceptable to the carer, this would have been noted in the young person's support plan. In any event, I note from one of Miss A's Section 23 Assessments that the School had made clear that they would be unable to say that male carers would never provide support and assistance to Miss A when she had respite care there. I accept that Ms C does not agree entirely with all of the information that is contained within one of the Section 23 Assessments referred to in this report. However, I am satisfied that this does not affect the decision I have reached on the complaint.

38. Furthermore, I consider the decision to stop using the School for additional respite care was a decision that the Council were reasonably entitled to take given their finite budget and that they had to meet the needs of all of the young people with disabilities and their families who require care and support. There is no evidence that the Council were treating Ms C and her daughter differently from any other young person with a similar disability and their carers.

39. I also consider the Council had clearly and consistently set out their position about respite care and the reasons for this to Ms C and her representatives throughout. In my view, no matter what the Council would have offered Ms C she was not, under any circumstances, prepared to consider any alternative to the School.

40. Having carefully reviewed the assessed needs of Miss A as set out in her Section 23 Assessments and the information supplied to me by the Council and the Advocate, on behalf of Ms C, I consider that in 2007 the respite care offered by the Council reasonably met the assessed needs of Miss A. I, therefore, do not uphold the complaint.

Recommendation

41. The Ombudsman has no recommendation to make.

Explanation of abbreviations used

Ms C	The complainant
Miss A	The daughter of the complainant and the subject of the report
The School	The special needs school which Miss A attends in Edinburgh
The Council	The City of Edinburgh Council
The Department	The Children and Families Department of The City of Edinburgh Council
The RAP	The Resource and Allocation Panel, a panel within the City of Edinburgh Council which funds respite care for families with children with disabilities in Edinburgh
The OAP	The Out of Authority Panel, a panel within the City of Edinburgh Council which funds requests on behalf of children with special needs for school placements out with Edinburgh
The CRC	A Social Work Complaints Review Committee held on 8 February 2007
The Advocate	The representatives from a voluntary organisation who have conducted the complaint on Ms C's behalf
The Centre	A residential centre for children with disabilities in Edinburgh

Officer 1

The Director of the Children and Families Department of The City of Edinburgh Council

Officer 2

The Head of Service Development of the Children and Families Department of The City of Edinburgh Council

Glossary of terms

A Section 23 Assessment	An assessment of a child with or affected by disabilities and their main carers in terms of Section 23 of the Education (Scotland) Acts, Children (Scotland) Act, Disabled Persons Acts
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