

Case 201000684: The Moray Council

Summary of Investigation

Category

Local government: Social Work; continuing care

Overview

The complainant, an advocate, (Ms C) raised a number of concerns on behalf of Mrs A about the financial assessment carried out by The Moray Council (the Council) to identify funds which could be taken into account towards the cost of residential care for her late mother, Mrs B.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) Mrs A was not told that she required to provide information about closed bank accounts and was then criticised for failing to do so (*not upheld*);
- (b) Mrs A was not told that she required to tell the Council everything her mother, Mrs B, spent her money on. If she had been told this then she would have done so before the Social Work Complaints Review Committee (the CRC) (*not upheld*); and
- (c) Mrs A considers that had the Council provided sufficient information about what was required in the first place, the financial assessment process would have been much quicker and easier for her (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

Completion date

- (i) review their process to ensure that a written record is made and retained of discussions with and advice given to an applicant where an application for financial assistance towards the costs for non residential and residential care is made. A copy of the record, together with a copy of the completed financial assessment application form, should also be provided to the applicant; 16 May 2011
- (ii) review their process to ensure that a record is 16 May 2011

made and retained of all subsequent meetings and telephone calls between Council officers and an applicant during the financial assessment process;

(iii) review their process to ensure that a record is made and retained of meetings and telephone calls between Council officers and members of the public where a complaint has been made about the Council; and

16 May 2011

(iv) review their process to ensure that a copy of the minutes of a CRC hearing is provided to a complainant and/or their representative within a reasonable time.

16 May 2011

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

Main Investigation Report

Introduction

1. It had been necessary for Mrs B, who died in October 2010, to go into residential care in January 2009. The complaint which I received from Ms C, on behalf of Mrs A, concerned The Moray Council (the Council)'s assessment of capital held by Mrs A's late mother (Mrs B) prior to her move into residential care and the consequential impact this had on the care charges payable by her. Mrs A disputed the Council's financial assessment and was unhappy with the way the Council undertook that assessment and their treatment of her.

2. Mrs A complained that she felt unjustly treated by the Council and that, in particular, their Finance Department provided a poor service. She said that she was not given information about the Council's process for financial assessment even though she was unaware of this.

3. Mrs A felt she was treated unreasonably by the Council and the stress of this had an adverse effect upon her health. Mrs A had, therefore, complained to the Council. Mrs A's complaint was referred to the Council's Social Work Complaints Review Committee (the CRC) for determination, where she was represented by Ms C. Mrs A was dissatisfied with the outcome of the CRC. Ms C then made a complaint, on behalf of Mrs A, to this office.

4. The complaints which have been investigated are that:

- (a) Mrs A was not told that she required to provide information about closed bank accounts and was then criticised for failing to do so;
- (b) Mrs A was not told that she required to tell the Council everything her mother, Mrs B, spent her money on. If she had been told this then she would have done so before the CRC; and
- (c) Mrs A considers that had the Council provided sufficient information about what was required in the first place, the financial assessment process would have been much quicker and easier for her.

Investigation

5. The investigation of Mrs A's complaint was based on the information provided to my complaints reviewer by Ms C, on behalf of Mrs A, and the Council's response to detailed written enquiries made about the complaint. I have not included in this report every detail investigated but I am satisfied that

no matter of significance has been overlooked. Ms C, on behalf of Mrs A, and the Council were given an opportunity to comment on a draft of this report.

**(a) Mrs A was not told that she required to provide information about closed bank accounts and was then criticised for failing to do so; and
(b) Mrs A was not told that she required to tell the Council everything her mother, Mrs B, spent her money on. If she had been told this then she would have done so before the CRC**

6. Mrs A felt that she was wrongly accused of deliberately withholding information and disposing of funds belonging to Mrs B. She considered that it was impossible to offer information to the Council about her mother's financial circumstances when she did not know what information was required and what the process was. Both her parents had been private about their financial affairs. She did not hold Power of Attorney or financial guardianship for Mrs B. She only had a mandate to operate an account with the Clydesdale Bank on Mrs B's behalf. She felt that Mrs B's income was for her to spend as required.

7. Mrs A says that she was willing to assist the Council with the financial assessment by providing all the information asked of her. She considered that she and her husband, Mr A, co-operated with the Council throughout the process and provided all of the information asked of them. During the financial assessment application process, the Council never requested any information about Mrs B's expenditure. She and her family chose to provide this voluntarily when they were, in their view 'unjustly', told that Mrs B's capital had been assessed as £31,837.57.

8. It was only after she complained to the Council and questioned the amount of the assessment of £31,837.57 that Mrs B's assessed capital was reduced to £17,457 following a review of her complaint by the Council's Director of Community Services (the Director).

9. Mrs A was unhappy with the review findings. She still considered the reduced sum of £17,457 to be inaccurate and unjust. Her complaint was, therefore, referred to the CRC for determination. This resulted in a hearing taking place on 1 December 2009. Mrs A and Mrs B, because they were not able to attend for health reasons, were represented at the CRC by Ms C and Mr A.

10. The CRC made the following findings: (i) that the Director instruct a review of the financial assessment, allowing as a disregard from notional capital the sums of £29 per week for coal and £10 per week for attendance at the Alzheimer's Society over the period from October 2008 until Mrs B's entry into respite care; and (ii) otherwise, the Council's Health and Social Care Services Committee rejected the terms of the complaint.

The Council's response

11. In response to my complaints reviewer's enquiries, the Council said they have a duty to carry out accurate financial assessments and to identify funds which can be taken into account for that purpose. They have a responsibility to ensure that appropriate contributions are made by a recipient towards the cost of their care. Mrs B was entitled to free personal care but this did not cover the full cost of her care fees. A financial assessment was carried out in accordance with the National Assistance (Assessment of Resources) Regulations 1992 (the Regulations), which determined the level of funding Mrs B was entitled to receive over and above the free personal care payment. It also determined the contribution Mrs B was required to make towards her care costs.

12. A financial assessment officer (Officer 1) from the Council visited Mr and Mrs A on 22 January 2009 to assist Mrs A with the financial assessment, to clarify the process and to explain the procedure involved. At the time of the initial assessment, the Council were not aware of all the bank accounts which were held by or for Mrs B. Officer 1 explained the details required for the completion of the financial assessment application form. Mrs A advised Officer 1 that the only money Mrs B had was in a Clydesdale Bank account, which was shown to her, and a balance of £3,695.45 was noted. Mrs A also advised that Mrs B had a weekly income of £238.96.

13. Following these initial enquires, a bank mandate was obtained enabling the Council to identify and access, on Mrs A's behalf, all relevant bank accounts in order to determine the correction contribution towards Mrs B's care costs. A number of additional bank accounts were subsequently identified.

14. The initial capital disclosed by Mrs A was £3,695.45. Following a preliminary assessment, a sum of £31,837.57 was determined as being potentially assessable actual and notional capital. When this was presented to Mrs A she provided further information to the Council about the capital, where it came from, who it belonged to and how some of it had been spent. The Council

requested vouched documentary evidence in order to validate the claims, in order to assess whether these could be allowed against the original assessment.

15. The Council formally reviewed the financial assessment on three separate occasions, which eventually resulted in a review by the Director, conducted on his behalf by the Council Auditor. The reassessment reduced the capital to £17,457. There was no discrepancy between the original and subsequent assessments. The original assessment was based on information obtained from Mrs A.

16. This was then further challenged by Mrs A at the CRC. At that stage, it appeared that the issues in dispute were confined solely to a reasonable assessment of Mrs B's living expenses. However, in the Statement of Case lodged on behalf of Mrs A, four further issues relative to the financial assessment process were raised at the beginning of the CRC hearing. Although at that point technically not within the remit of the CRC, because they had not been considered in the Director's review, these additional issues were addressed by the Director at that stage so they could be considered by the CRC. In essence, the expanded complaint focused on two areas: the assessment of capital held by Mrs B prior to her move into residential care; and the consequential impact which this had on the assessment of care charges payable by Mrs B.

17. The final review of the CRC hearing allowed a further disregard for coal, heating and attendance at the Alzheimer Society but no other disregards.

18. The Council were satisfied that they applied the Regulations and those dealing with the deprivation of capital correctly. In doing so, the Council considered that they gave full consideration to all of the issues raised by Mrs A and, where appropriate, disregards were given. The dispute which remained was in relation to disregards which were allowed against the final charge.

19. The Council does not produce any supporting explanatory leaflets relating to the financial assessment process. They work directly from the Scottish Government Charging for Residential Accommodation Guidance (CRAG). The regulations contained in CRAG are complex and difficult for a lay person to follow. Therefore, it is Council policy that, at the start of the application process, a trained member of staff assists anyone completing a funding application.

They visit the applicant to guide and explain what is a complex procedure. Mrs A was provided with this support in order to assist with the completion of her funding application.

20. The Council believed they did everything they possibly could have to support Mrs A in determining the financial assessment for Mrs B. They considered that they tried to deal with these sensitive matters in as tactful a manner as possible. However, they had to ensure that the assessments were based on the correct financial information which Mrs A had a duty to disclose.

(a) and (b) Conclusions

21. The Council have supplied this office with a copy of the application form for financial assistance towards the costs of Mrs B's non residential and residential care (the application form), which was completed at the meeting Mrs A had with Officer 1 on 22 January 2009.

22. Under the section headed 'ACCOUNTS, SAVINGS AND INVESTMENTS', there is a sole entry for the Clydesdale Bank account showing a current balance of £3,695.45.

23. In the section headed 'FINANCIAL INFORMATION-WEEKLY INCOME' it is recorded that Mrs B had a total weekly income of £238.96.

24. There is a section headed 'WEEKLY DISREGARDS'. In this section there are entries totalling £71.45.

25. The final page is a declaration signed by Mrs A and Officer 1 declaring that the information contained in the application form represents a true statement of the service user's financial affairs; agreeing to the Council verifying any of the information contained in the application form; and that they have been advised of the appeals procedure. The application form also records that it was completed by Officer 1.

26. The Council have told me that the application form was the outcome of the meeting and that there are no other minutes or notes of the meeting.

27. Mrs A's next contact with the Council appears to have been on 11 February 2009 when a Council Community Care Finance Officer (Officer 2) wrote to her. The letter asked Mrs A to sign and return a mandate and provide

details of all banks, building societies or other financial establishments which hold or held accounts in the name of Mrs B, since the declared Clydesdale Bank account appeared to be a new account. On 19 March 2009, a Council financial assessment administration officer (Officer 3) then wrote to Mrs A requesting sight of account statements for all accounts held by Mrs B from the six months prior to her receiving respite service in January 2009.

28. The relevant question for me in my consideration of both complaints is what took place at the meeting Mrs A had with Officer 1 on 22 January 2009 which led to Mrs A initially only disclosing the one account with the Clydesdale Bank and the limited information about what she wanted treated as disregards for the purposes of calculating Mrs B's capital. This is because all that occurred thereafter in the financial assessment process, which ultimately led to Mrs A's complaint and the reduction in Mrs B's assessed capital, flowed from that meeting.

29. I have considered the evidence carefully. However, there were no independent witnesses present at the meeting and, apart from the application form, the Council have no other record of the meeting. Therefore, it has not been possible for me to reach definite conclusions on what Officer 1 discussed with, and what guidance she gave to, Mrs A about the financial information which should have been disclosed on the application form; in particular, in relation to closed bank accounts and what Mrs B spent her money on. Furthermore, it is unclear why the mandate for authorisation to obtain financial information was not signed at the meeting, given that it appears to form part of the application form.

30. Officer 2 next wrote to Mrs A on 14 April 2009, informing her that the Council had assessed Mrs B as having total capital of £31,837.57. It was at this stage that Mrs A provided further financial information to the Council. Mrs A was clearly very unhappy with the initial financial assessment and she complained. This led to the Director's review and the reduction in Mrs B's assessed total capital from £31,837.57 to £17,457, which was subsequently further disputed on behalf of Mrs A at the CRC hearing. During this time Mr A, on behalf of Mrs A, met with Officer 2 and the Director to discuss the now disputed financial assessment and Mrs A's complaint.

31. However, the Council have no notes of the meetings Mr A had with Officer 2 and the Director. Neither are there records of two telephone calls

which Mr A had with the Council Auditor, who carried out the financial assessment review on behalf of the Director, even though they informed the outcome of the Auditor's deliberations on Mrs A's requests for disregards. This has not been helpful to my investigation of Mrs A's complaints.

32. As it has not been possible for me, for the reasons stated in paragraphs 29 to 31, to determine whether Mrs A's version of events is correct and, therefore, to reach appropriate conclusions, I am unable to uphold the complaints. I would add, however, that I have not seen evidence of criticism of Mrs A by the Council concerning any failure to disclose any financial information during the financial assessment process.

33. While I have not upheld the complaints, and though the Council have told me that they consider there were no discrepancies between the original and subsequent financial assessments, it is of concern that there was a substantial reduction of over £14,000 in the amount of Mrs B's assessed capital in the revised assessment. The Council told my complaints reviewer that applying for Council funding in connection with care fees is a complex procedure and, because of this, it is their policy at the start of the application process for a trained member of staff to assist anyone completing a funding application. Given what has occurred in this case, and because of the complexities of the financial application process, it is therefore essential, in my view, that a written record of advice and information given by Council officers to applicants at the initial application stage is made and retained and a copy provided to the applicant, together with a copy of the financial assessment application form completed by the applicant.

34. Furthermore, I consider that subsequent Council's officers' contact with both Mrs A and her husband Mr A, who assisted her throughout, should also have been recorded, particularly when it became clear that Mrs A was unhappy with the outcome of the initial financial assessment and that she had made a complaint to the Council.

35. Finally, during the course of my investigation, it became apparent that Ms C and Mrs A were not provided with a copy of the minutes of the CRC hearing held on 1 December 2009, which I consider they should have been. Therefore, this has formed part of the recommendations I have made.

(a) and (b) Recommendations

| | <i>Completion date</i> |
|---|------------------------|
| 36. I recommend that the [authority]: | |
| (i) review their process to ensure that a written record is made and retained of discussions with and advice given to an applicant where an application for financial assistance towards the costs for non residential and residential care is made. A copy of the record, together with a copy of the completed financial assessment application form, should also be provided to the applicant; | 16 May 2011 |
| (ii) review their process to ensure that a record is made and retained of all subsequent meetings and telephone calls between Council officers and an applicant during the financial assessment process; | 16 May 2011 |
| (iii) review their process to ensure that a record is made and retained of meetings and telephone calls between Council officers and members of the public where a complaint has been made about the Council; and | 16 May 2011 |
| (iv) review their process to ensure that a copy of the minutes of a CRC hearing is provided to a complainant and or their representative within a reasonable time. | 16 May 2011 |

(c) Mrs A considers that had the Council provided sufficient information about what was required in the first place, the financial assessment process would have been much quicker and easier for her

37. Mrs A complained that had the Council provided her with sufficient information about their financial assessment process at the appropriate time she believes that the financial assessment process would have been much quicker and easier for her. Mrs A said that she had been willing to assist the Council with the financial assessment by providing all the information asked of her but that it was impossible to offer information when she did not know what information was required and what the process was.

38. In their response, the Council told my complaints reviewer, as I refer to in paragraph 19, that it is Council policy at the start of the application process for a trained member of their staff to visit an applicant to assist anyone completing a funding application and to guide and explain the procedure, which is complex.

Mrs A was provided with such support in order to assist with the completion of the application.

(c) Conclusion

39. For the reasons given in paragraphs 29 to 31, I am unable to determine whether Mrs A's version of events is correct about what advice was given and what information was sought by the Council when the application was initially completed at the meeting with Officer 1 on 22 January 2009. Therefore, while I accept that it is likely that if the information supplied about Mrs B's bank accounts and expenditure had been provided sooner to the Council, the financial assessment process would have been quicker and easier for Mrs A. I cannot reach definite conclusions. For this reason, I am unable to uphold the complaint.

40. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

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| Mrs B | The mother of Mrs A |
| Ms C | The complainant, an advocate representing Mrs A |
| Mrs A | The aggrieved and the person making the complaint |
| The Council | The Moray Council |
| The CRC | The Council's Social Work Complaints Review Committee |
| Mr A | The husband of Mrs A |
| The Director | The Council's Director of Community Services |
| The Regulations | National Assistance (Assessment of Resources) Regulations 1992 |
| Officer 1 | A Council financial assessment officer |
| CRAG | The Scottish Government Charging for Residential Accommodation Guidance |
| The application form | The completed application form in which Mrs A applied for financial assistance towards the costs of Mrs B's non residential and residential care |
| Officer 2 | A Council Community Care finance officer |
| Officer 3 | A Council financial assessment administration officer |

Glossary of terms

Notional capital

Capital the applicant may be deemed to possess even if they do not actually possess it

The National Assistance
(Assessment of Resources)
Regulations 1992

The Regulations concerning the assessment of the ability of a person to pay for residential care in a care home