

## SPSO decision report



**Case:** 201704255, Stirling Council  
**Sector:** Local Government  
**Subject:** social work  
**Decision:** Upheld, recommendations

### Summary

Mrs C complained on behalf of her son (Mr A) about the care and treatment he received from a care home in the Stirling council area. Mrs C removed Mr A from the care home back to his family home. Mrs C had become increasingly concerned about Mr A's welfare in the care home and its suitability for a person with Mr A's particular needs. After Mr A returned to the family home, Mrs C complained about the care home to the Care Inspectorate who then investigated. When the council became aware of the Care Inspectorate report and findings they contacted Mrs C for more information. Subsequently the council initiated an Adult Support and Protection (ASP) Investigation using their authority under the Adult Support and Protection (Scotland) Act 2007. The council investigation reported several months later and concluded that there was no evidence that Mr A was at risk of harm. Mrs C was unhappy with the conclusions of the council's report and also the quality and scope of their investigation. Mrs C complained to the council but remained dissatisfied and brought her complaint to us.

We took independent advice from a social work adviser. We found that the terms of the Adult Support and Protection (Scotland) Act 2007 only apply where a person is at possible risk of harm. By the time the council became involved, Mr A was living back at home and there was no suggestion he was at risk of harm, and so they should not have conducted their investigation as they did. We also found that the investigation did not properly consider and test all the evidence available and did not use an appropriate standard of proof (looking for near certainty rather than a balanced decision). We also found that the investigation of Mrs C's complaint by the council had not properly considered all of her concerns. Therefore, we upheld the complaint.

We noted that the council had previously provided us with evidence of changes it had already made to its processes and training of staff. We made a number of further recommendations to help ensure staff have the appropriate skills and knowledge to conduct both adult protection and complaints investigations in the future.

### Recommendations

What we asked the organisation to do in this case:

- Apologise for the unreasonable reporting of the adult support and protection investigation, and acknowledge how difficult this experience has been for the family. The apology should meet the standard set out in the SPSO guidelines on apology available at: [www.spsso.org.uk/leaflets-and-guidance](http://www.spsso.org.uk/leaflets-and-guidance).
- Apologise to Mrs C and her family for the failure to properly consider Mr A's current situation in deciding to undertake an ASP investigation; conduct an investigation in line with their own guidance and timescales; communicate with Mrs and Mr C in an open and transparent way at all times; apply the appropriate standard to the evidence considered; properly assess and interrogate some of the evidence; identify these failures during their own complaint investigation; properly conduct a complaints investigation. The apology should meet the standards set out in the SPSO guidelines on apology available at [www.spsso.org.uk/information-leaflets](http://www.spsso.org.uk/information-leaflets)

What we said should change to put things right in future:

- In similar cases, calling all parties involved together to discuss and plan the way forward should be considered.
- Staff should be aware of the principles of the Adult Support and Protection (Scotland) Act (2007).
- Staff should be aware of how best to assist an adult with complex needs to communicate their views and wishes and be aware of how to access assistance in doing this.
- Staff should be aware of the purpose of any investigation and the relevant standards that apply. Staff should be able to appropriately obtain and evaluate the evidence and use this to give reasons for decisions reached. The Scottish Government has issued guidance to decision makers which will help support staff in decision-making. This can be found at <http://www2.gov.scot/publications/2010/02/23134246/0>

In relation to complaints handling, we recommended:

- Full information relating to social work matters under investigation should be supplied when requested by the SPSO.
- Staff should be aware of the scope of a complaints investigation and the relevant standards that apply. Staff should be able to appropriately obtain and evaluate the evidence obtained and use this to give reasons for decisions reached. SPSO have issued

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.