

## Scottish Parliament Region: South of Scotland

### Case 200601561: Scottish Borders Council

#### Summary of Investigation

##### **Category**

Local government: Complaints handling

##### **Overview**

Ms C's complaint resulted from the concern she raised that her elderly aunt (Ms A) had been incorrectly charged for Homecare Services for the preparation of meals by Scottish Borders Council (the Council). Ms C's concern was addressed by the Council, however, Ms C alleged that the Council dealt inadequately with her complaint about the handling of her concerns.

##### **Specific complaints and conclusion**

The complaints which have been investigated are that the Council:

- (a) failed to guide Ms C through the Council's complaint's process or respond adequately to her complaint regarding the Homecare charges levied against her late aunt (*not upheld*);
- (b) postponed and delayed the Complaints Review Committee Hearing (the Hearing), which extended over the time period allowed for the Hearing to sit and report (*upheld*); and
- (c) delayed in forwarding a copy of the Hearing Report to Ms C (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council apologise to Ms C for the delay to the Hearing taking place, and for the delay in forwarding her a copy of the Hearing Report.

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

## **Main Investigation Report**

### **Introduction**

1. The Ombudsman received a complaint from Ms C, who stated that the Scottish Borders Council (the Council) inadequately addressed the formal complaint she had made, regarding the charges they levied against her aunt (Ms A), who was aged 96, for the assistance she received with the preparation of her breakfast. Sadly, Ms A died during the course of the complaint enquiry. Ms A had received this assistance after an assessment of need reinforced by specialist advice had been completed. Supported in her home by the Council's Social Work Department, Ms A had received help from Mondays to Fridays inclusive, with the preparation of tea and toast for her breakfast. According to Ms C, this was a 15 minute task and to charge for this was contrary to the guidelines on free personal care in place at that time. Ms C alleged she contacted the Council on several occasions to complain about the Homecare Service (the Service) charges, however, the Council had taken little action regarding her complaint. Thereafter, she said she received no advice or guidance from the Council about how to progress her complaint. Following her appeal against the Council's decision to charge for the Service, she complained the subsequent Complaint Review Committee Hearing (the Hearing) was continuously postponed. She said this led to unacceptable delays before the Hearing sat. Ms C stated the Council also delayed in sending her a copy of the minutes of the Report of the Hearing.

2. The complaints from Ms C which I have investigated are that the Council:
- (a) failed to guide Ms C through the Council's complaint's process or respond adequately to her complaint regarding the Homecare charges levied against her late aunt;
  - (b) postponed and delayed the Complaints Review Committee Hearing, which extended over the time period allowed for the Hearing to sit and report; and
  - (c) delayed in forwarding a copy of the Hearing Report to Ms C.

3. The Ombudsman noted that Ms C alleged that the Council had wrongly charged Ms A for the Service and had acted contrary to guidelines. The Council's position was that they had applied these charges in line with legislation. Ms C has been advised that this aspect of her complaint has not been investigated, as the Ombudsman is unable to adjudicate on the interpretation of legislation.

## **Investigation**

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Ms C and the Council. This included a timeline of events leading to the Hearing which took place on 18 April 2007 and to Ms C subsequently receiving a copy of the Hearing Report dated 15 August 2007. I considered the Council's Social Work Service complaints procedure (the Complaints Procedure), which is a separate process from their complaints handling procedure. I also made a number of written enquiries of the Council.

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

### *Background*

6. According to the Complaints Procedure it states 'a Manager will be nominated to investigate your complaint. When the investigation is complete we will contact you with our formal response. Informal complaints are dealt with by the Manager of the service in question'. The Council also outlines that they have a duty to acknowledge a formal complaint within five days of receiving it and to respond fully within 28 days, unless an agreement for an extension is reached with a complainant (see paragraph 4).

7. It is stipulated that a Hearing should sit and have the report of a Hearing prepared and distributed to all the interested parties within 56 days of an appeal being lodged.

### **(a) The Council failed to guide Ms C through the Council's complaint's process or respond adequately to her complaint regarding the Homecare charges levied against her late aunt**

8. Ms C initially complained to the Ombudsman on 29 August 2006 and stated that the Council had charged Ms A for the Service. Ms C said she was dissatisfied with the manner the Council had dealt with her complaint regarding this issue. According to Ms C, she had made several contacts with the Council, however, the Council had not responded adequately to her complaint or guided her through their complaint's process, regarding how she could formalise her complaint against them.

9. On 6 September 2006 I telephoned the Council's Customer Care Manager (Officer 1), who told me that he had no record of a complaint being received from Ms C, therefore, her concerns had not been treated as a complaint. Officer 1 stated that Ms C should write a complaint to him and he would address this directly with her.

10. On 6 September 2006 I wrote to Ms C and the Chief Executive of the Council (the Chief Executive). I detailed the substance of Ms C's complaint and summarised the discussion I had with Officer 1 which reflected what Officer 1 had told me. I confirmed to Ms C that as her complaint had not been raised formally with the Council, and an opportunity given to them to consider it under the complaints procedure, I could take no further action at that time. On 7 September 2006 Ms C wrote to the Council indicating she wished to raise a formal complaint (see paragraph 9)

11. I have seen the letter dated 11 September 2006 from Officer 1, which acknowledged Ms C's complaint and advised her that an officer would be nominated shortly to investigate her complaint. Officer 1 stated that the name and address of this officer would follow shortly.

12. Within a letter dated 25 September 2006 from the Council's Customer Care Department, Ms C was advised of the name and telephone number of the person nominated to deal with her complaint.

13. A further letter from the Council, dated 29 September 2006, told Ms C that the investigative officer had been withdrawn, 'as they have previously been in correspondence with you in relation to your complaint, therefore, it would be inappropriate for her to investigate' (see paragraph 12). The Council stated that when another member of staff was re-nominated, Ms C would be notified. The Council apologised for their delay in investigating her complaint.

14. I have seen that the Head of Housing and Social Work Strategy (Officer 2) responded to Ms C's complaint in his letter dated 10 November 2006. He stated he considered that the Council had acted in accordance with legislation, and explained the reasons for this (see paragraph 3). Thereafter, Officer 2 provided Ms C with details of the Complaints Review Committee (the Committee), and outlined how to receive further information regarding the Committee, should Ms C wish to exercise her right to appeal the Council's decision.

15. In early 2007 Ms C complained to this office that her formal complaint had not been adequately dealt with by the Council. On 10 April 2007 the Director of Social Work (Officer 3) replied to my initial enquiries and stated that, in his view, the Council had guided Ms C through their complaints process and had evidence of contacts with her.

16. When replying to my further enquiries on this issue, the Chief Executive said that Ms C first wrote to the Council on 28 May 2006 regarding Ms A's Homecare charges and they responded to her on 22 June 2006. Thereafter, the Council did not receive any contact from Ms C to say she was dissatisfied with their reply. However, the Council subsequently received letters from two MSPs, on behalf of Ms C, and the Council responded to these letters. Thereafter, when the Council received a letter from Ms C on 7 September 2006 indicating that she wished to submit a formal complaint, the Chief Executive stated 'we then followed this through in line with our procedures' (see paragraph 4).

17. Furthermore, the Chief Executive disputed the assertion that the Council had not guided Ms C through their complaints procedure. He stated that the Council had responded to Ms C's original letter and it was not until she made contact with the Ombudsman that the Council became aware in September 2006 of Ms C's wish to take the matter further and said 'we had no way of knowing that she was unhappy with our original response' (see paragraphs 9 and 16).

18. Within the complaint correspondence I received from the Council, I have seen a letter dated 25 May 2006 (received by the Council on 29 May 2006) from Ms C addressed to Officer 3, in which Ms C said she was making enquiries following an article she had read in a local newspaper, regarding personal care. Ms C stated 'I have discovered [Ms A] is entitled to a rebate'. The Council responded to this enquiry in their letter date 22 June 2006 (see paragraph 16). Thereafter, a letter dated 30 June 2006 from an MSP had enquired about the Service and Homecare charges on behalf of Ms C. This was replied to by Officer 3 on 13 July 2006 and a letter dated 9 August 2006 from a different MSP, which incorporated similar enquiries, was also replied to by Officer 3, on 25 August 2006.

*(a) Conclusion*

19. In Ms C's view, the Council had not adequately addressed the complaint she made regarding the Homecare charges levied against her late aunt and they had not guided her how to formalise her complaint. I have read all the documentation supplied to me, which included correspondence between Ms C, the Customer Care Department, Officer 2 and Officer 3 (see paragraphs 11 to 14 and paragraph 18). I have also reviewed the correspondence between the two MSPs and Officer 3 (see paragraphs 16 and 18). In doing so, I have carefully considered all the information available to me and I do not agree with Ms C's view. It is clear that Ms C's letter to the Council dated 25 May 2006 was an enquiry, not a complaint, and it was correctly responded to and in good time by the Council. Officer 3 also replied appropriately to the enquiry letters received from the two MSPs who acted on behalf of Ms C (see paragraph 18).

20. Thereafter, the Council correctly followed their Complaints Procedure, once they became aware that Ms C wished to make a complaint, and guidance was offered in good time to her, regarding how to follow the Council's appeal process related to the Hearing (see paragraphs 11 to 14).

21. In my view, the Council's responses to Ms C's complaint were clear, and demonstrated that they had considered her complaint appropriately in accordance with their Complaints Procedure (see paragraph 4). Although I do not dispute that Ms C remained unhappy with the outcome to her complaint, I can find no evidence to support her view that the Council failed to guide Ms C through their complaints process and respond adequately to the issues she raised up to the point of her appeal (see below). Taking all these factors into account, I do not uphold this complaint.

*(a) Recommendation*

22. The Ombudsman has no recommendations to make.

**(b) The Council postponed and delayed the Hearing, which extended over the time period allowed for the Hearing to sit and report and (c) The Council delayed in forwarding a copy of the Hearing Report to Ms C**

23. According to Ms C, following her appeal letter dated 21 November 2006 against Council's decision (see paragraph 14) and the Council's acknowledgement dated 8 December 2006, she did not receive regular contact or updates from the Council to inform her of the date the Hearing would take place. Ms C said it was left to her to contact the Council (by telephone, letter

and personal visits to Council offices) to try to obtain information about proposed Hearing dates. According to Ms C, after she contacted the Council there were occasions she was given dates for the Hearing, however, these were changed and cancelled at short notice (see Annex 2). As Ms C resided outwith the Council area, and had planned to attend the Hearing with an independent adviser (the Adviser), the uncertainty surrounding the dates of the impending Hearing created considerable disruption and upset, both to her and to the Adviser.

24. On 9 November 2007 the Chief Executive responded to my enquiries and stated that, on 8 December 2006, Corporate Administration (CA) was advised by email that Ms C had written to Social Work and requested a Hearing to consider her complaint appeal. Thereafter, on 14 December 2006, CA received a copy of Ms C's formal letter which requested the Hearing. To clarify the Hearing process, the Chief Executive explained this in detail and stated 'This [process] is often problematic'. He went on to advise that '[the Committee] meets to review the responses made to complainers making representations in relation to the discharge of, or failure to discharge, any of the functions of the Council under the Social Work (Scotland) Act 1968, or any of the enactments referred to in Section 2 (2) thereof. The composition of [the Committee] is - one elected member with a portfolio for Social Work, and two independent persons. Three people constitute a quorum. As result of resignations, the Council had only 3 independent people listed and trained to carry out this remit. Contact with members to check availability for a [Committee] is carried out by email as this is considered the fastest method of communication. For reasons of availability of members, officers and accommodation, meetings of [the Committee] have to be arranged for dates and times which did not clash with other commitments'.

25. According to the Chief Executive, CA was aware that the deadline of 56 days for the Hearing to sit would expire on 16 January 2007 (see paragraph 7), but considered that, due to the intervention of the Christmas and New Year period, it was decided these circumstances warranted an extension to the deadline. The Chief Executive stated 'Unfortunately, Ms C was not advised of this extension'.

26. The Chief Executive also advised 'It is usual practice to check availability with Officers before writing out to members of [the Committee] with suggested dates. The relevant officer in the Social Work Department was, therefore

emailed with a selection of 3 dates towards the end of January and beginning of February, asking which of the dates would be most suitable. The dates were: 24 January, 31 January and 9 February 2007. In the week prior to Christmas, the Officer from Social Work telephoned to say that he was available on 24 January and 9 February, but it then proved impossible to get any independent members for these two dates, which, therefore, had to be abandoned. The office was then closed from Friday 22 December until after the New Year. On 8 January 2007 the CA again checked availability of Officers with a further selection of dates – 5 February, 14 February, 23 February and 28 February 2007, and contacted Councillors and Committee Members about dates. On 17 January 2007 [Ms C] contacted the Social Work Department enquiring about the progress of the Hearing. The CA Committee Officer dealing with the matter then telephoned [Ms C] and explained the situation, advised her of the proposed dates and indicated that at that stage no confirmation had been received from [the Committee] of their availability’.

27. The Chief Executive provided a timeline record of events connected with the proposed Hearing from 8 December 2006 to the date the Hearing sat on 18 April 2008. I have reviewed this timeline and observed that the dates that featured specific details of the planning of the proposed Hearing are 15 December 2006 up to 9 April 2007 (see paragraph 26 and Annex 2).

28. The Hearing took place on 18 April 2007 and Ms C was advised at the Hearing of the Committee’s decision regarding her appeal.

29. In my review of the paperwork submitted by the Council, I have seen emails dated 15 March 2007 and 4 April 2007 from the CA Committee Officer to the Committee, as she tried to arrange a suitable date for the Hearing (see Annex 2). I have also reviewed the email dated 9 April 2007 from the CA Committee Officer to the Committee and Ms C’s Adviser, which included details of the Hearing planned for 18 April 2007 (see paragraph 28 and Annex 2). However, I have not seen any Council record of the contacts Ms C told me she had made to the Council (see paragraphs 23 and 33 and Annex 2).

30. Ms C said that, at the Hearing on 18 April 2007, she requested a copy of the Report and was advised she would receive it the following week. A month passed and Ms C was told by a Council officer she would have to wait another month and that the delay was caused by the pending election. However, by

18 July 2007 Ms C had not received the Report. This was three months after the Hearing sat and she said she found this situation unacceptable.

31. In his response to my enquiry, the Chief Executive explained that the findings of the Committee at the Hearing and any recommendations had to be placed before the relevant committee of the Council, before any further action could be taken. He said that, following the Hearing on 18 April 2007, there were no Council/Committee meetings prior to the combined Scottish Parliament and local Council elections held on 3 May 2007. Thereafter, Committees were not appointed until 24 May 2007 and the decision of the Committee taken on 18 April 2007 was, ultimately, ratified by the Council at their meeting on 28 June 2007.

32. The Chief Executive added, 'Unfortunately, as a result of an oversight and with the advent of holidays, it was not until 15 August [2007] that a formal letter was sent to Ms C'.

33. The Chief Executive commented additionally on the events which took place during the weeks before and after the Hearing. His view was that a number of telephone contacts had taken place between the Committee Officer and Ms C, however, he stated 'it is not normal practice for CA to log calls, and no detailed record exists of the timing or nature of these discussions. Similarly, a substantial number of emails, relating to the attempts to arrange [the Hearing], have not been retained' (see paragraph 26 and Annex 2).

34. During this period, Ms C also contacted me by telephone; for example, on 8 January 2007, as she had not received a reply to her letter requesting details of the Hearing. Thereafter, up to the Hearing on 18 April 2007, Ms C regularly updated me with details of her contacts with the Council as she attempted to establish when the Hearing would sit (see Annex 2).

35. According to the Chief Executive, he said that throughout the period covered by this complaint, CA Committee Officers, who were also responsible for election administration, were very heavily involved in the recruitment and training of staff and other preparatory and follow-up work related to the combined Scottish Elections held in May 2007. This was in addition to their normal duties in connection with Council committees. He advised that 'if there do appear to be slight gaps when reminders could have been issued or other

steps taken, they can be attributed in no small measure to the pressures under which staff were working at that time’.

36. The Chief Executive also considered that the Council had acknowledged there were too few independent people available to sit on the Committee, with the result it was difficult to find the appropriate number of people for Hearings. He stated that since April 2007, the Council had been actively trying to recruit further Members - through advertisements in the media, in their staff newsletter within the Council and through their New Ways Partnership. New members have since been recruited.

37. In conclusion, the Council recognised that, in this instance, there were substantial delays in arranging and holding the Hearing, for the reasons outlined above (see paragraphs 25, 26 and 36 and Annex 2). The Chief Executive advised that efforts were being made, wherever possible, to address the problems this complaint outlined. He said ‘The delays are much regretted. It is equally regrettable if Ms C feels that she was not kept adequately informed of the progress, or lack thereof, in making the necessary arrangements, and for this the Council can only offer a sincere apology.’

*(b) and (c) Conclusion*

38. The Council’s postponement and delay to the Hearing caused Ms C considerable upset. Furthermore there is an acceptance that Ms C was not adequately kept informed of the progress of the planned Hearing (see paragraph 37). This was compounded by the delay to send Ms C a copy of the Report (see paragraphs 30 to 32).

39. According to the timeline, I have considered the problems the Chief Executive described in forming the Committee, and I acknowledge that the Council made considerable efforts for the Hearing to take place before 18 April 2007.

40. Based on the paperwork I have seen, in my view the main thrust of these efforts appear to have gained momentum after the deadline of 56 days for the Hearing to sit and report had expired on 16 January 2007 (see paragraph 26). I have taken into account the Council’s comments regarding the Christmas and New Year break, however, it is clear that the Hearing was postponed and delayed considerably beyond the 56 day time-period. In addition I have noted

that Ms C was not advised of the initial postponement extension (see paragraph 25).

41. While I acknowledge that the Elections of May 2007 placed added pressure on many organisations and bodies, I have seen no good reason why the Report of the Hearing took from 18 April 2007 to 15 August 2007 to be prepared and sent to Ms C.

42. Accordingly, having taken these circumstances into account, I uphold complaints (b) and (c).

*(b) and (c) Recommendations*

43. I acknowledge that the Council have taken steps to address the availability of individual people to sit on the Committee. They have also expressed to the Ombudsman that the delays were much regretted, and stated it was equally regrettable that if Ms C felt she was not kept adequately informed regarding the Hearing, then the Council can only offer a sincere apology.

44. The Ombudsman, therefore, recommends that the Council apologise to Ms C for the delay to the Hearing taking place, and for the delay in forwarding her a copy of the Hearing Report.

45. The Board have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Board notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Ms C	The complainant
The Council	The Scottish Borders Council
Ms A	Ms C's late aunt, who received the Homecare Service
The Service	Homecare Service
The Hearing	Complaint Review Committee Hearing
The Complaints Procedure	The Council's Social Work Service Complaint procedure
Officer 1	The Council's Customer Care Manager
The Chief Executive	The Council's Chief Executive
Officer 2	The Council's Head of Housing and Social Work Strategy
The Committee	The Council's Complaints Review Committee, which is a sub-committee of the Executive
Officer 3	The Council's Director of Social Work
The Adviser	The independent adviser who accompanied Ms C at the Hearing
CA	The Corporate Administration of the Council
Councillor 1	A Councillor who was considered to sit at the Hearing

Councillor 2

A Councillor who was considered to sit at the Hearing

Ms E, F and G

Committee Members considered to sit at the Hearing

**The Hearing Timeline details supplied by the Chief Executive**

(see paragraph 27)

29 January 2007 – CA was notified that the Officer from Social Work was no longer available on 5 February and 14 February, and that [Ms C] had advised Social Work that she could not attend on 28 February as her representative was not available, which left only 23 February.

30 January 2007 - CA emailed out to Councillors and Committee Members advising that this was the only available date and asking them to confirm their availability for that day. In the course of the next few days CA was advised that neither Councillor was available and 2 out of the 3 other members were also unavailable – 23 February could not proceed.

7 February 2007 – CA advised Social Work that 23 February was not now suitable.

8 February 2007 – CA then sent another email stressing that the matter was becoming time critical and asking for availability on Tuesday 13 March, Wednesday 14 March, Monday 26 March and Tuesday 27 March 2007. CA was advised that Social Work officers were not available on 13 or 14 March 2007 and therefore wrote to [Ms C] on 8 February asking if she would be available 26 or 27 March. [Councillor 1] was only available on 26 March, [Councillor 2] was available on 27 March, Ms F was not available on either of these dates and Ms E then advised on 12 February that she was not available either date as she was not available on Mondays or Tuesdays. These dates were therefore abandoned.

13 March 2008 – Social Work contacted CA to ask about the progress of the Hearing as [Ms C] had been in touch to complain about the delay and they were advised of the situation. The Committee Officer telephoned [Ms C] and tried to explain to her the great difficulty being experienced in getting enough people available to sit on the Committee.

15 March 2007 – CA emailed Councillors, Officers and Members of the Committee (Ms E, F and G) and wrote to [Ms C] advising that the March dates

were no longer a possibility but again asking for availability on Thursday 5 April, Monday 9 April and Tuesday 10 April 2007.

16 March 2007 – CA was notified by [Councillor 1] that he was only available on 10 April; Ms E was only available on 5 April, and on 19 March was notified that Ms E was not available on any of these dates – again there were not enough members for the Committee to meet.

4 April 2007 – CA sent a further email asking for availability on Tuesday 17 April; Wednesday 18 April; Thursday 19 April and Friday 20 April 2007. A copy of this email is attached to highlight that every effort was being made to arrange this Hearing.

CA was notified by return that [Councillor 2] was not available on 20 April, the Social Work Officer was available on 17, 18 and 20 April and [Councillor 1] was not available on any of these dates.

9 April 2007 – CA was advised the Ms F was not available. A telephone call to Ms G and Ms E confirmed they were available on 18 April 2007 and [the Hearing] was finally arranged for that date.

9 April 2007 – CA emailed everyone involved confirming the date, including [Ms C's] representative. It was not possible to contact [Ms C] by telephone on that date and, being Easter Monday, there was no mail from the office on that particular day, but an additional note was added to the email sent to her representative so that he could advise her in the evening when the office was closed.

11 April 2007 – The Agenda and Papers were sent as usual 7 days prior to the meeting.

18 April 2007 – [Ms C's] complaint was heard by [the Committee] and [Ms C] was advised of the decision'.

**List of Ms C's telephone contacts with me regarding the period before the Hearing sat (includes case file notes)**

(see paragraph 34)

18 January 2007 - Ms C told me that she had handed a 'chaser' letter to the Council offices requesting a response to her previous letter asking when the Hearing would sit. When she returned to Edinburgh that same that day, a Council officer telephoned her and said the Hearing would sit either 5, 23 or 28 February 2007. Ms C was also told that the Council would put this in writing to her, she would be invited to attend and take someone with her.

30 January 2007 - my colleague received a telephone message from Ms C - she had not received a Hearing date.

1 February 2007 - Ms C told me she understood that the Hearing may sit on 23 February 2007.

9 February 2007 - Ms C told me that the Hearing would not sit on 23 February 2007 but would sit on either 26 or 27 March 2007.

17 April 2007 - Ms C told me that the Hearing would sit on 18 April at 13:30 and she would be accompanied.

19 April 2007 - Ms C said the Council's Solicitor and Councillors attended Hearing. Ms C would send me a copy of the minutes when she got them (middle next week).

21 May 2007 - Ms C telephoned to tell me she still had not received a copy of the Report of the Hearing although she had phoned several times requesting this.

**List of legislation and policies considered**

Scottish Borders Council Social Work Complaints Procedure

