

Case 200602756: Aberdeen City Council

Summary of Investigation

Category

Local government: Social work; complaint handling

Overview

The complainant (Mrs C) raised a number of concerns about the care her son received from Social Work Services at Aberdeen City Council (the Council) through the Community Mental Health Team (CMHT) in the months prior to his death in 2006. Mrs C raised these concerns through the Council's complaints process, up to and including a Social Work Complaints Review Committee (CRC). The CRC made a number of resolutions (duly noted by the Council) but advised Mrs C that the actions and decisions of the CMHT were not a matter the CRC could consider. Mrs C complained to the Ombudsman's office about her original concerns and that the CRC had ruled the actions of the CMHT out of its remit. Mrs C was unhappy that it appeared that her complaints should rather have been addressed through the NHS complaints procedure but the Council had not advised her of this earlier.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the CRC failed to appropriately address Mrs C's complaints (*not upheld*);
and
- (b) the Council failed to take adequate steps to collaborate with the NHS to ensure that Mrs C received a full response to her complaints (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that guidance to CRC members and relevant staff clearly indicates the importance of careful drafting of the CRC minute, to ensure that a decision on each complaint considered is recorded and the basis for any recommendations is explained;
- (ii) apologise to Mrs C for their failure to follow-up with the NHS on the joint issues of her complaint;

- (iii) review guidance to CRCs and members of Council staff who support them, to ensure that CRC minutes can fully reflect the conclusions reached and reasons for decisions made; and
- (iv) advise him of the development and progress of an action plan from within the working group towards a policy for managing joint complaints in partnership with the NHS.

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

Main Investigation Report

Introduction

1. On 1 April 2008 the Ombudsman received a complaint from the complainant (Mrs C). Mrs C had raised a number of concerns about the care her son (Mr A) received from Social Work Services at Aberdeen City Council (the Council), through the Community Mental Health Team (CMHT), in the months prior to his death in September 2006. Mrs C raised these concerns on 2 October 2006 and went through the Council's complaints process, up to and including a Social Work Complaints Review Committee (CRC). The CRC made a number of resolutions (duly noted by the Council) but advised Mrs C that the actions and decisions of the CMHT were not a matter the CRC could consider. Mrs C complained to the Ombudsman's office about her original concerns and that the CRC had ultimately ruled the actions of the CMHT out of its remit. Mrs C was unhappy that it appeared that her complaints should in fact have been addressed through the NHS complaints procedure but the Council had not ensured this was fully understood by Mrs C at the outset.

2. The complaints from Mrs C which I have investigated are that:
- (a) the CRC failed to appropriately address Mrs C's complaints; and
 - (b) the Council failed to take adequate steps to collaborate with the NHS to ensure that Mrs C received a full response to her complaints.

Investigation

3. Investigation of this complaint involved obtaining and reviewing correspondence between the Council and Mrs C. A number of additional enquiries were made of the Council, in particular concerning the discussion of the CRC and the actions taken by the Council in relation to the resolutions of the CRC.

4. 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 a draft of this report.

Legislation

5. Section 5B of the Social Work (Scotland) Act 1968 gave the Secretary of State the power to require local authorities to establish procedures for considering complaints relating to their social work functions. In 1996, the Social Work (Representations) (Scotland) Directions 1996 (the Directions) were

issued. These stated that if a complainant remained unsatisfied with a response from a local authority, the matter could be referred to a CRC. The CRC should make recommendations to the social work or other committee who, in turn, should decide what action to take and notify the complainant in writing of that decision. If a recommendation is not accepted, reasons must be given.

6. Circular no SWSG5/1996 with guidance notes (the Guidance) was issued with the Directions in 1996. The Guidance stated that CRCs must be conducted formally and have regard to generally accepted procedures which accord with natural justice.

Background

7. Mr A suffered from long-term mental health problems and alcohol dependency. He received support from a social worker (the Social Worker) who was employed by the Council and worked as part of the CMHT. The CMHT consisted of seven team members, two of whom were employed by the Council and the remainder by Grampian NHS Board. Mrs C was becoming increasingly concerned about Mr A's physical and emotional health and contacted the Social Worker a number of times advising that she considered her son was 'at risk' and in need of input from a community mental health nurse (CMHN), known previously as a community psychiatric nurse (CPN). Mrs C was advised by the Social Worker that Mr A was not ill enough to require a CMHN as his problems were substantially related to his misuse of alcohol. Mrs C asked that a record of her concerns be placed in Mr A's file and forwarded to his GP. Mr A's health continued to cause concern and he refused the medical attention suggested by the Social Worker until July 2006 when he agreed to a joint medical and social work home visit and later to a hospital admission on 7 August 2006. Mr A's condition deteriorated further and he died in hospital on 6 September 2006. Mrs C raised a separate complaint with Grampian NHS Board about Mr A's mental health care in hospital at that time.

(a) The CRC failed to appropriately address Mrs C's complaints

8. Mrs C raised a number of concerns in her complaints correspondence with the Council. Her correspondence was circulated to members of the CRC prior to their meeting on 20 December 2007. In summary Mrs C's complaints as contained in the letters and emails presented to the CRC were that:

- (i) the agreement between the Social Worker and Mr A that Mr A would receive immediate support from the Social Worker in a crisis did not work, as the Social Worker was often slow to respond to Mr A's calls;

- (ii) there had not been a further review of Mr A's case after February 2006 (this had been identified by the Chief Executive during his review of the complaint);
- (iii) the Social Worker was, therefore, not adequately supervised;
- (iv) the doctor supporting the CMHT (the Doctor) had not made a referral to Mr A's GP as promised after his examination of Mr A on 26 July 2006;
- (v) Mrs C had not been advised whether her request for a CPN and her concern that Mr A was at risk had even been discussed by the CMHT; and
- (vi) Mrs C's request (dated 23 February 2006) that her email to the Social Worker (point v) be forwarded to Mr A's GP had not been acted on by the Social Worker (Mrs C obtained confirmation of this directly from Grampian NHS Board).

9. At the meeting on 20 December 2007 the CRC heard from Mrs C and representatives from Social Work Services. The CRC learned that subsequent to the Chief Executive's examination of the complaint, a further review of Mr A's case, undertaken by the Social Worker had been located, dated 15 May 2006. The CRC produced a brief minute of the hearing which contained six resolutions for consideration by the Council's Area Committee (AC) namely:

- (i) to note a further review dated 15 May 2006 had been traced;
- (ii) that in their opinion there had been no lack of oversight of the Social Worker;
- (iii) that it was outwith their remit to comment on the outcome of the deliberations of the CMHT;
- (iv) that in their opinion it might have been appropriate to have obtained a second bedside opinion on the best method of dealing with Mr A's dual diagnosis at an earlier stage;
- (v) that it would be appropriate for the Council and Grampian NHS Board to jointly respond to Mrs C's concerns once Grampian NHS Board had considered any action to take in response to Mrs C's complaint to Grampian NHS Board; and
- (vi) to recommend that the desirability of conjoining the existing complaints procedures applicable to Grampian NHS Board and the relevant social work authorities be considered.

These were duly considered by the AC on 20 February 2008. Mrs C was advised on 12 March 2008 that the AC resolved to 'note' the content of the resolutions.

10. Mrs C was dissatisfied with this situation; although she originally made enquiries to the Ombudsman's office in December 2006, she formally complained on 27 March 2008 and we received this on 1 April 2008. Her complaint was that the CRC conclusions apparently precluded their consideration of her concerns about the actions and inactions of the Social Worker because he was part of the CMHT but she had not been previously advised of this restriction. She noted that the majority of the CRC had been spent discussing the actions of the Social Worker and indeed a number of criticisms were made. Mrs C was also concerned that the AC had simply 'noted' the resolutions of the CRC.

11. The CRC minute was very brief and made no reference to the actual discussions that had taken place at the meeting. When read the resolutions make no reference to Mrs C's concerns about the conduct of the Social Worker and the clear inference is that this is because the actions of the CMHT are outwith the CRC jurisdiction. However, in that Mr A was receiving services from the Council through their employee, the Social Worker, Mrs C's concerns about the Social Worker were subject to review by the CRC. Mrs C was then understandably concerned that the CRC had failed to appropriately consider her complaints.

(a) Conclusion

12. In view of the lack of information or explanation to support the CRC's resolutions further information was gathered from the Council who provided two handwritten notes taken by those present at the 20 December 2007 meeting, in addition to further comment and explanation from the members of the CRC as to their views and conclusions. The further information focused on the CRC members' understanding of the remit of the CRC, the matters they had considered and the meaning of the apparent restriction in their consideration referred to in paragraph 9 (iii) of this report.

13. On reviewing this response it becomes clear that the CRC were of the view that overall the Social Worker had conducted himself properly, so much so that they had not felt it necessary to comment specifically on his actions. In addition I conclude that the exclusion of consideration of the CMHT was not intended to refer to the actions of the Social Worker; but rather to the consideration of any medical matters such as the need for a CMHN. Although not specifically stated by the CRC members this would also preclude consideration of the failure by the Doctor to notify Mr A's GP after 26 July 2006.

14. The role of the Ombudsman's office in reviewing a complaint about a CRC is to consider whether there is evidence of maladministration or service failure. In the absence of these, the CRC retain the right to exercise their own judgement on the actions of social workers. In this case, the CRC had before them documentary evidence supplemented by a detailed discussion on the day. Under the Guidance notes, the CRC have to abide by the rules of natural justice. I have no concerns about the conduct of the hearings. However, I am concerned that, in their report to the AC, the CRC did not adequately explain what decisions they had reached on Mrs C's complaints and why they had reached the resolutions they did, and this has caused confusion for Mrs C. I have considered this point carefully and, while I do not uphold this complaint given the evidence that all the matters raised were adequately considered and the resolutions made by the CRC on the balance of the evidence were matters for their discretion, the minute produced does not clearly indicate all the conclusions reached and was open to significant misinterpretation.

15. With reference to the AC decision to note the resolutions see complaint heading (b) below.

(a) *Recommendations*

16. The Ombudsman recommends:

- (i) that the Council ensure that guidance to CRC members and relevant staff clearly indicates the importance of careful drafting of the CRC minute, to ensure that a decision on each complaint considered is recorded and the basis for recommendations is fully explained; and
- (ii) review guidance to CRCs and members of Council staff who support them, to ensure that CRC minutes can fully reflect the conclusions reached and reasons for decisions made.

(b) The Council failed to take adequate steps to collaborate with the NHS to ensure that Mrs C received a full response to her complaints

17. Mrs C complained to the Council on 2 October 2006 and received a response from the Chief Executive on 6 November 2006. In his response the Chief Executive noted that the Social Worker was employed as part of a multi-disciplinary team (alongside health professionals not employed by the Council) and this made it difficult to respond to all the issues Mrs C had raised. He noted that Council staff had made contact with Grampian NHS Board and understood her concerns were currently being considered by them. He noted that it might

be appropriate for a joint response to be issued by the Council and Grampian NHS Board at a later date.

18. In response to enquiries made by this office, the Council advised that on 29 April 2008 they were still unaware of the outcome of the NHS complaint and had taken no further action to issue a joint response. They noted this point again in a response dated 13 August 2008. In a response of 15 October 2008, the Chief Executive advised this office that he would be instructing the Council's Chief of Social Work Services to report to the AC regarding the feasibility of implementing the recommendation of the CRC to liaise with the NHS on joint responses to complaints. In a subsequent letter of 7 April 2009 the Chief Executive advised that the Chief of Social Work felt this was not feasible because of the statutory nature of the social work complaints process. The Chief Executive also noted that Grampian NHS Board had advised him that they had fully responded to Mrs C's complaints and could be of no more assistance to the Council on this point. In a further response on this point dated 21 May 2009, the Chief Executive noted that the need to operate a joint complaints procedure had now been identified by the team manager responsible for the Joint Futures¹ policy and a working group would be set up to this end.

(b) Conclusion

19. The provision for joint complaint handling between NHS and local authorities has been developing in recent years as services are increasingly provided on a joint basis. This complaint amply demonstrates why this is essential to good complaint handling. Mrs C raised concerns about her son's care both in the community and about aspects of care in hospital. His care in hospital was raised with Grampian NHS Board and responded to by them. Although the Council recognised at an early stage in November 2006 that a joint response might be helpful for Mrs C, it did not follow-up on this by making contact with the NHS until after October 2008. Because of this and also by treating Mr A's care in the community as two separate streams (health care and social work care), it was not identified that the NHS complaint never included

¹ Joint Futures is the lead policy on joint working between local authorities and the NHS in community care. Its main aim is to provide faster access to better and more joined up services through improved joint working. It expects local partnerships to take holistic decisions on the management, financing and delivery of community care services for all care groups.

Mrs C's concerns about the care received from the CMHT. This has effectively denied Mrs C the opportunity to raise these concerns and have them appropriately considered as too much time has now passed for further consideration in this regard. I consider the lack of contact with the NHS, particularly when the need for a joint response had been identified from the outset, was a failure by the Council.

20. The AC, when it considered the CRC recommendation in February 2008, noted the resolution but did not give any further comment or explanations as to why it was doing nothing to enact the resolution. I consider this to be a breach of the Directions which state that if a recommendation is not accepted, reasons must be given.

21. Based on the failure to adequately communicate with the NHS about a known issue and the failure to properly follow the Directions, I uphold this complaint. I am pleased to note that the Council have already initiated action through the working group which may address the problem of resolving joint complaints for the future.

(b) Recommendations

22. The Ombudsman recommends that the Council;

- (i) apologise to Mrs C for their failure to follow-up with the NHS on the joint issues of her complaint; and
- (ii) advise him of the development and progress of an action plan from within the working group towards a policy for managing joint complaints in partnership with the NHS.

23. 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

| | |
|-------------------|-----------------------------------------------------------------|
| Mrs C | The complainant |
| Mr A | The aggrieved, Mrs C's son |
| The Council | Aberdeen City Council |
| CMHT | Community Mental Health Team |
| CRC | Social Work Complaints Review Committee |
| The Directions | The Social Work (Representations) (Scotland) Directions 1996 |
| The Guidance | Circular no SWSG5/1996 |
| The Social Worker | The social worker responsible for Mr A's social care |
| CMHN | Community mental health nurse |
| The Doctor | The community doctor supporting the CMHT |
| AC | The Council Area Committee who considered the CRC report |
| Dual diagnosis | The co-existence of mental health and substance misuse problems |

Glossary of terms

Dual diagnosis

The co-existence of mental health and substance misuse problems

List of legislation and policies considered

The Social Work (Scotland) Act 1968

The Social Work (Representations) (Scotland) Directions 1996

Circular no SWSG5/1996

Joint Future: Scottish Government, Report of the Joint Future Group
November 2000