

The Scottish Public Services Ombudsman Act 2002

Investigation Report

UNDER SECTION 15(1)(a)

SPSO

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Scottish Parliament Region: North East Scotland

Case ref: 201704484, Aberdeen City Council

Sector: Local Authority

Subject: Social Work / Child services and family support

Summary

Ms C's daughter (Miss A) has complex medical needs. In 2011, the council assessed her as requiring 42 nights respite care each year but so far, this had not been provided. As her own health was suffering, and threatening to compromise the care she could give Miss A, Ms C made a formal complaint to the council about their failure to provide Miss A with the respite care she needed.

The council acknowledged that despite their efforts, they had been unable to meet Miss A's requirements; they said that the resources needed in terms of the availability of a suitable carer, and the specialist knowledge and training required, were in short supply. They had approached a children's hospice; a local charity with residential care facilities and put funding in place to provide assistance from Ms C's mother. The council said that although they had had no success, it remained their priority to provide Miss A with the respite care she needed.

We took independent social work advice and found that Miss A's complex needs made it extremely challenging to provide an appropriate service for her. The council had looked at a number of options which, for reasons outwith their control, had not proved possible. However, with the passage of time, there should have been greater consideration of Miss A's circumstances and those of her family, a greater recording of the action taken by the council and a more creative and imaginative approach in order to show that they had done everything in their power to satisfy Miss A's unmet respite care needs. We upheld the complaint.

The Ombudsman's recommendations are set out below:

What we are asking the Council to do for Ms C:

| What we found | What the organisation should do | Evidence SPSO needs to check that this has happened and the deadline |
|--|---|---|
| Since 2011, the Council failed unreasonably to provide Miss A with the respite care she needed | Apologise to Ms C for failing to take all reasonable action to meet Miss A's care need. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/leaflets-and-guidance | A copy or record of the apology By: 26 November 2018 |

We are asking the Council to improve the way they do things:

| What we found | What should change | Evidence SPSO needs to check that this has happened and deadline |
|--|--|---|
| The Council did not do enough nor did they demonstrate fully what they did since 2011; how they reviewed the situation, the different approaches tried; when something failed, a reassessment to produce new, more novel approaches; and, examples of collaborative work. The Council did not demonstrate that they made exhaustive efforts which was what was required in this case | Children with complex care needs should receive respite care in line with their assessment | Evidence of a reflective discussion into the circumstances leading to this complaint and the details of any action subsequently taken (bearing in mind the Carers (Scotland) Act 2016). By: 24 December 2018 |

Evidence of action already taken

The Council told us they had already taken action to fix the problem. We will ask them for evidence that this has happened:

| What we found | Outcome needed | What we need to see |
|---|---|--|
| The previously identified foster carer has confirmed that they are available and is working with the Council to provide respite care for Miss A | Respite care should be provided for Miss A in terms of her assessment | An update on the position. By: 24 January 2019. If respite care is not in place within this timeframe, details of the Council's alternative solution |

Who we are

The Scottish Public Services Ombudsman (SPSO) investigates complaints about organisations providing public services in Scotland. We are the final stage for handling complaints about the National Health Service, councils, housing associations, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, water and sewerage providers, colleges and universities and most Scottish public authorities. We normally consider complaints only after they have been through the complaints procedure of the organisation concerned. Our service is independent, impartial and free. We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland.

The role of the SPSO is set out in the Scottish Public Services Ombudsman Act 2002, and this report is published in terms of section 15(1) of the Act. The Act says that, generally, reports of investigations should not name or identify individuals, so in the report the complainant is referred to as Ms C, her daughter is Miss A. The terms used to describe other people in the report are explained as they arise and in Annex 1.

Introduction

1. Ms C complained to me about Aberdeen City Council (the Council)'s failure to provide her daughter (Miss A) with respite care. The complaint I have investigated from Ms C is that:

despite an agreement in 2011 to provide Ms C's daughter with respite care, the Council have failed unreasonably to do so (*upheld*).

Investigation

2. With my complaints reviewer, I have considered carefully all the information provided by Ms C and the Council including:

- the complaints correspondence;
- relevant Social Work documentation and correspondence relating to Miss A;
- a Child's Plan dated November 2016;
- the Social Work (Scotland) Act 1968;
- the Children (Scotland) Act 1995;
- the Looked After Children (Scotland) Act 1995;
- Guidance on Short Breaks (Scottish Government 2008); and
- the Carers (Scotland) Act 2016.

3. I made formal enquiries of the Council in February 2018 and the Council's response was taken into account. I obtained independent advice from a social worker (the Adviser) which was also considered.

4. I have decided to issue a public report on Ms C's complaint due the significant personal injustice she has suffered and because I consider there may be wider learning for other local authorities in relation to the provision of respite care for children with complex needs.

5. This report includes the information required for me to explain the reasons for my decision on this case. Please note that I have not included every detail of the information considered but I confirm that all the information available during the investigation has been reviewed. Ms C and the Council were both given an opportunity to comment on a draft of this report.

Background

6. Miss A was born prematurely in September 2009. She has complex needs; she has a gastronomy feeding tube fitted (inserted directly into her stomach); and

a tracheostomy (an opening into her windpipe through her neck to assist her breathing). She requires 24 hour support to keep her safe and well and cannot be left alone. Miss A lives at home with Ms C and a sibling who also has care needs.

7. In 2011, when she was two, Miss A was assessed by the Council who identified that she required a range of needs and resources, including a need for 42 nights respite care each year.

Ms C's complaint to the Council

8. Ms C said that as the Council had not provided the respite care required since 2011 and as her own health was suffering because she was stressed and exhausted by the situation, she made a formal complaint to the Council on 12 August 2017.

9. In her letter she said that although she was truly grateful for the support received which allowed Miss A to live at home, any attempt to provide the respite care that she needed had failed. She added that:

"... all I need is a small break to recharge my batteries, keeping me physically and mentally strong"

and that a small period of "normal life" would mean "everything."

10. She emphasised that the Council had an obligation to provide respite to families who needed it and that it was disgraceful that this had not been provided for Miss A. She said that she found the situation very difficult to accept, particularly when families with less disabled children were provided with a break.

11. The Council replied on 5 September 2017. They confirmed Miss A's requirement for respite care but said that:

"To provide [Miss A] with a level of respite support appropriate to her medical conditions, Children's Services would need to source a residential provider with the correct level of training and staff to service user ratio in order to meet [Miss A]'s requirements. Alternatively, a carer who has specialist knowledge and training."

12. They acknowledged that both these resources were in short supply in the Council's area.

13. The letter went on to detail the efforts made to try to meet Miss A's needs (Direct Payment funding had been put in place) and the difficulties that had been met in trying to find a suitable foster carer. They said that they had approached a local charity who provided respite care but had found a number of barriers to them looking after Miss A and while, more recently (in January 2017), someone had been identified as a suitable respite foster carer for Miss A, family issues had arisen which prevented the individual from pursuing the matter.

14. The Council said that while they had been unable to provide the care Miss A needed, they had made attempts to do so and would continue to look to find a solution to the situation. However, they said that it was important to find an environment for Miss A which had the staff and resources to meet her high level of need and within the wider area there was a shortage of appropriate residential care facilities to offer children with complex medical needs respite. Nevertheless, it was a priority within Miss A's care plan to provide her with the respite care she needed.

15. Miss C was unhappy with the Council's response and complained to me. She said that she felt let down because she had waited patiently for years for the respite care Miss A needed.

Complaint: despite an agreement in 2011 to provide Ms C's daughter with respite care, the Council have failed unreasonably to do so

The Council's position

16. It is not in dispute that the Council have so far failed to provide the respite care that Miss A needs and in response to us when we notified them of the complaint, they apologised to Ms C and her family (they had not previously done so). They said that considerable efforts had been made to find a solution to the problem, including:

- an approach to a children's hospice in another authority which provided, amongst other things, family support and respite care (Ms C did not think this was suitable, given the logistics and difficulties involved in transporting Miss A);
- an approach to a local charity providing respite care;

- continued communication with the Council's Fostering Team and a public advert; and
- transfer of Direct Payments to Ms C to allow her mother to care for Miss A when other carers were not available (it was noted that this was not a sustainable solution as Ms C's mother was in her 70s).

17. However, the Council had had no success, although they said that a previously identified foster carer (paragraph 13) was still indicating a desire to care for Miss A once they were free to do so. They said that, throughout, Ms C had regularly been updated (although in commenting on a draft of this complaint, Ms C said that this was not the case and that she only received updates when she enquired).

18. As part of my investigation, on 13 February 2018, further information was sought from the Council, including information about the Direct Payments made to Ms C and about Miss A's Care Plan. I also asked for a copy of the public advert referred to (paragraph 16) and whether or not the Council had approached the local NHS Board to see whether they could provide the required care, or whether a member of the Council's staff could deliver the care.

19. In their reply of 1 March 2018, the Council apologised and said that they had used the term 'public advert' incorrectly. They added that the Fostering Service regularly 'advertised' or sent referrals to external agencies when looking for carers and they provided details of all the referrals made to external providers seeking a respite carer for Miss A. It appeared from this that in April 2015 a local placement had been sought for Miss A, without success, and a national charity had been contacted in September 2015.

20. External agencies were approached in October, November and December 2015 but no placement options were available. Similarly in 2016, in January and March, the Council contacted external agencies. They also contacted the local NHS Board in March 2016 to enquire of the possibility of any respite provision from the Childcare Home Service and were told that short term respite in hospital was available. However, Ms C felt that to place Miss A in hospital would be a last resort as Ms A would be placed on a general medical ward without individual care and stimulation.

21. In January 2017, a suitable respite foster carer was identified but, later, personal circumstances prevented them from undertaking the training required to

provide Miss A's care. During this time (and since), the Council said that Miss A's referral to both internal and outside agencies remained live but I have seen no evidence of this. I asked whether a member of staff could be available to provide respite care but were told that the Council did not employ any staff with the required medical skills to offer the necessary support. Recently (in June 2018), I was advised by the Council that the identified foster carer had indicated that their circumstances had changed and they would be available to provide the respite care Miss A needs. I understand that work towards this is progressing.

Advice received

22. I obtained independent social work advice on Miss A and Ms C's situation and the Adviser confirmed that it would be extremely challenging to find an appropriate service for a little girl with such profound disabilities. They further confirmed that the Council had looked at a number of available options which had not proved possible, for reasons outwith the Council's control.

23. However, the Adviser also noted that while the Child's Plan from September 2017 provided a full picture of Miss A's abilities and personality and a clear assessment of her need, the document did not include an action plan as required within the Child's Plan. They said that this should have included what the Council wanted to happen, what were they going to do, by when and by whom. They added that the document should also have recorded Ms C's contribution (and Miss A's if possible). They went on to say that without this action plan it was difficult to assess whether there had been any desirable change or any deterioration in Miss A's wellbeing and/or if the plan needed to be changed. They stated that this was particularly relevant when an identified need was not being met, as in Miss A's case.

24. The Adviser further noted that the Child's Plan recognised that:

"Balancing the different needs of both [Miss A] and [her sibling] is having an effect on [Ms C]'s own physical and mental health"

and that

"Without overnight care the family are at significant risk of family breakdown."

25. The Adviser commented that in their view, with the passage of time, it had become unreasonable to expect Ms C to continue to cope without the support that all the professionals agreed was required, particularly as Miss A was getting older. In the circumstances, they added that the situation required to be looked at more creatively or imaginatively. By which they explained that in atypical circumstances such as those affecting Ms C and Miss A, a bespoke package should have been commissioned and developed. They said that the cost of the risk of Ms C becoming ill and Miss A and her sibling requiring full time care would offset the cost of a bespoke package.

26. The Adviser also commented that they would have expected to have seen more evidence of ongoing contact with Ms C, given that Miss A had been identified as a child in need with a Child's Plan and care package in place. They said that the Child's Plan should have been reviewed no less frequently than six monthly and any actions identified and acted upon. If the plan was not able to be followed through, it should have been reviewed. In this connection, in commenting on a draft of this report, the Council said that since 2011 they had regularly reviewed Miss A's care plan and that Ms C's allocated social worker had been in contact on a monthly basis or more frequently when specific intervention was needed, for example, in relation to Direct Payments made to Ms C to allow her mother to care for Miss A overnight. However, Ms C denied that this was the case. The Council said that there was no agreed level of contact, as it was felt that Social Work were proactive in keeping in touch with Ms C.

27. The Adviser noted that although the Council had approached outside agencies to seek an appropriate carer, there was no evidence that, when all the options tried had failed (paragraphs 16 and 17), whether they considered an anonymised child specific advert to attract respite carer(s) for Miss A. Similarly, they said that there was precedence for local authorities to share or purchase services from one another and, while it was clear that they had approached a charity in a neighbouring authority (paragraph 16), it was not clear whether any attempts had been made to explore the possibility of any joint provision. They said that the Children (Scotland) Act 1995 Regulations and Guidance (Chapter 6) recognised that it would not be possible for every authority to provide all the services needed by a child and promoted such joint arrangements.

28. The Adviser went on to say that, in their view, an unmet need since 2011 required a collaborative approach and it was not clear to them how far the Council

had progressed this; each agency stating what it could or could not do was not a collaborative approach.

29. The Adviser said that more creative thought should have gone into commissioning a specific service, given the unique difficulty and the risk of Ms C's home situation breaking down if she could no longer cope. They said that an anonymised advert in the local and surrounding areas tailored to Miss A's circumstances could have been made. Similarly, thought could have been given to utilising a member of the Council's staff and providing them with necessary training.

30. Overall, while acknowledging the challenging nature of providing suitable respite care for Miss A given her profound difficulties, the Adviser was, nevertheless, critical. They considered that given the passage of time (from 2011), there should have been greater consideration of the circumstances and greater recording of the action taken, in order to show that the Council had done everything in their power to meet Miss A's needs.

Decision

31. It is clear that the Council have, so far, failed to provide the respite care which they assessed was required for Miss A in 2011. What I have to decide is whether or not their inability to do so was reasonable in the circumstances; and, whether their efforts to meet Miss A's needs were sufficient.

32. I am in no doubt that the type of care needed would be difficult to provide, especially in view of the fact that as well as complex disabilities, Miss A also has a tracheostomy. This is needed to assist her breathing and requires regular specialist care. The Council consider they have done as much as they can to try to meet Miss A's needs and I consider that in a number of respects they have taken positive steps to try to secure appropriate respite care for Miss A, for instance they have:

- carried out a clear assessment of need;
- put in place a Child's Plan that provided a comprehensive picture of Miss A's ability and personality; and
- looked at a number of options to try to provide Miss A with respite care.

33. However, the advice I have received and accept is that more could have been done particularly given the passage of time since Miss A's need for respite care was identified. In summary:

- the Child's Plan should have included an action plan;
- there should have been six monthly reviews of the Child's Plan;
- a specific anonymised advert should have been placed in the local press; and,
- a bespoke package of respite care should have been commissioned and developed.

34. Miss A is getting older and the Council recognise that with the passage of time, Ms C has been struggling to provide the support her daughter needs to stay at home. She also has another child at home with care needs. It has been recognised that Ms C's mental and physical health are now being detrimentally affected and this in turn could impact upon Miss A's future care.

35. It is also important to note that since Miss A was first assessed new legislation has come into place. The Carers (Scotland) Act 2016 which took effect in April 2018 is to ensure carer involvement and empowerment and to bring about an improvement in their emotional and physical wellbeing. These matters are at the heart of Ms C's complaint.

36. It is my view that the Council could have done more, regardless of the difficult task they were posed. This is a little girl who is growing older and who has been without the respite care she and her family have needed since 2011. In these circumstances, the Council should have been able to demonstrate what they did in the intervening years in terms of action planning; how they regularly reviewed the situation and the different approaches tried; when something failed, there should have been a reassessment to produce new, more novel approaches; and examples of collaborative work.

37. The Council have not demonstrated to me that they have made exhaustive efforts, which is what I believe was required in this case, particularly after six years without result and when they recognised that Ms C's own health was being compromised. For this reason, I uphold the complaint. Nevertheless, I am pleased that at the moment the situation with the identified foster carer is progressing but there are no guarantees that this will be successful. So far, no alternative solution has been identified.

38. In view of my findings, the Council should apologise formally to Ms C for their failure to take all reasonable action to meet Miss A's respite care needs.

Furthermore, senior social work staff should review and reflect upon the approach taken and to consider what further they could have done.

39. I am pleased to note that the Council have accepted the recommendations and will act on them accordingly.

40. The Council are asked to inform my office of the steps that have been taken to implement the remaining recommendations by the dates specified. I expect evidence (including supporting documentation) that appropriate action has been taken before I can confirm that the recommendations have been implemented to my satisfaction.

Recommendations

Learning from complaints

The Ombudsman expects all organisations to learn from complaints and the findings from this report should be shared throughout the organisation. The learning should be shared with those responsible for the operational delivery of the service as well as the relevant internal and external decision-makers who make up the governance arrangements for the organisation, for example elected members, audit or quality assurance committee or clinical governance team.

What we are asking the Council to do for Ms C:

| What we found | What the organisation should do | What we need to see |
|--|---|---|
| Since 2011, the Council failed unreasonably to provide Miss A with the respite care she needed | Apologise to Ms C for failing to take all reasonable action to meet Miss A's care need. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/leaflets-and-guidance | A copy or record of the apology By: 26 November 2018 |

We are asking the Council to improve the way they do things:

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| <p>The Council did not do enough nor did they demonstrate fully what they did since 2011; how they reviewed the situation, the different approaches tried; when something failed, a reassessment to produce new, more novel approaches; and, examples of collaborative work. The Council did not demonstrate that they made exhaustive efforts which was what was required in this case</p> | <p>Children with complex care needs should receive respite care in line with their assessment</p> | <p>Evidence of a reflective discussion into the circumstances leading to this complaint and the details of any action subsequently taken (bearing in mind the Carers (Scotland) Act 2016).</p> <p>By: 24 December 2018</p> |

Evidence of action already

The Council, told us they had already taken action to fix the problem. We will ask them for evidence that this has happened:

| What we found | Outcome needed | What we need to see |
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| <p>The previously identified foster carer has confirmed that they are available and is working with the Council to provide respite care for Miss A</p> | <p>Respite care should be provided for Miss A in terms of her assessment</p> | <p>An update on the position.</p> <p>By: 24 January 2019.</p> <p>If respite care is not in place within this timeframe, details of the Council's alternative solution</p> |

Terms used in the report

Annex 1

| | |
|-------------------------|---|
| Child's Plan | a tool to help services, such as Education, Health, Social Work and Voluntary Sector services, co-ordinate a range of additional help offered to a child to improve wellbeing outcomes. |
| Direct Payment funding | a sum paid directly to be used to fund a required service |
| Gastronomy feeding tube | a tube inserted directly into the stomach for feeding purposes |
| Miss A | the complainant's daughter |
| Ms C | the complainant |
| The Adviser | an independent social work adviser |
| The Council | Aberdeen City Council |
| Tracheostomy | An opening into the windpipe through the neck to assist breathing |

List of legislation and policies considered

Annex 2

The Social Work (Scotland) Act 1968

The Children (Scotland) Act 1995

The Looked After Children (Scotland) Act 1995

Guidance on Short Breaks (Scottish Government 2008)

The Carers (Scotland) Act 2016