



Ombudsman's Commentary

DECEMBER 2006 REPORTS

I laid eight reports before the Scottish Parliament today. Four relate to local government and four to the health sector. I fully or partially upheld all of the local government complaints. I partially upheld two of the health complaints and did not uphold the other two. I made recommendations in six of the Reports and all the bodies complained about have accepted them. The individual reports are available on the SPSO website, where they can be searched for by sector, date, Parliamentary region, body complained about, and reference number.

Ombudsman's overview

This month, I am highlighting a complaint about financial assessment of eligibility for council-funded care in a care home. I found that the Council had acted unreasonably in including the notional value of a property in the assets of an elderly man and regarding him as self-funding for his care home costs. In upholding the complaint I made several recommendations. Further, the investigation identified a more general issue concerning the different policies and practices being adopted by Councils in different parts of Scotland. I will, therefore, be asking the Scottish Executive Health Department to consider making changes to existing guidance and regulations.

Financial assessment of care; complaint handling: East Dunbartonshire Council (200503530)

The complainant, Mr C, complained that in calculating the financial assets of his father, Mr A, the Council decided to disregard the transfer of Mr A's home to his son nine years previously for 'love, favour and affection' and included the notional value of the property in his assets. As a consequence of this notional capital Mr A was regarded as self-funding for his care home costs. Mr A had no actual funds and was not able to pay his costs. Mr A's son stated that his father was faced with bankruptcy and eviction from the care home because of the debts incurred. Mr C complained that the Council had not acted reasonably in reaching the decision to regard Mr A as in possession of notional capital as they had reached a decision based on assumptions rather than real evidence. Mr C also complained about the lack of an independent appeal procedure to review his complaint.

I upheld the complaint that the Council acted unreasonably in reaching a decision that it would not fund Mr A's care home costs; and that the Council had no effective procedure for reviewing its decision. I recommended that the Council:

- (i) review their current practice for assessment of nominal capital to ensure that it complies with the spirit of the relevant regulations;
- (ii) reassess Mr A's financial means, excluding the nominal value of the property; and
- (iii) apologise to Mr C for the previous lack of formal procedures available to him to progress his complaint.

In reaching this finding I stressed that I acknowledge this was a very difficult and complex decision for the Council. I state in the Report:

'The Council's correspondence file contains a number of comments from several members of staff expressing concern at the difficulties in operating under the current guidance and a need for a change in the law and/or regulations to bring clarity to this matter. Such a change could enable them to reach unequivocal decisions and avoid the very difficult situation that they found themselves in on this occasion. The file also indicates that the treatment of notional capital has caused a number of problems for the Council. The representative of the care home provided anecdotal evidence that they were aware of a number of other cases and that they dealt with a number of Councils all of whom operated different policies. Age Concern have also advised that the policy adopted by each Council varies throughout Scotland. This view was confirmed by representatives of the local authority Social Work Departments who were consulted.'

Therefore, while my conclusions are based solely on the circumstances of this complaint, the investigation raises a more general concern about the current system of council-funded care and has wide-ranging implications. I state in the Report:

'I am concerned that the current system is confused and inconsistent throughout Scotland and in particular that there is no recognised, independent appeals process for such financial assessments and decisions....'

Ombudsman's Commentary

DECEMBER 2006 REPORTS

Financial assessment of care; complaint handling:

East Dunbartonshire Council (200503530)
continued

'This office has previously considered a number of cases where the treatment of notional capital formed at least an element of the complaint. These involved different Councils. We have identified that the lack of any specific time-scales in the guidance have caused considerable problems. The different policies operating throughout Scotland lack clarity and deny the public the certainty needed for proper financial planning.

A number of Councils link their local policy to the rules for bankruptcy or inheritance tax. It is not for this office to determine what time limits there should be or what consideration should be given to the reasons for the transfer of property for 'love, favour and affection'. However, the current regulation is causing distress to a vulnerable sector of the population and placing a disproportionate administrative burden on Councils.'

Accordingly, I have sent a copy of this report to the Scottish Executive Health Department asking them to consider making changes to the existing guidance and regulations in light of the problems identified in this report.

Local government

In addition to the above Report, I upheld or partially upheld three other complaints about the local government sector this month.

Refuse collection arrangements:

North Ayrshire Council (200402031)

This complaint concerned a new refuse collection service that was introduced on the Isle of Arran by the Council. The new service involved the introduction of wheeled bins, replacing the collection of black sacks. The complaint was made by the son, Mr C, of an elderly woman, Mrs C. Mrs C's home is 250 metres from the designated refuse collection point and, on the grounds of old age and infirmity, she applied for kerbside collection. Her application was refused because Council assessments determined that her home had no suitable kerbside.

While I found that the Council had correctly followed procedure, I found that the question of Mrs C's individual needs was not properly addressed or resolved by the Council. As I state in the Report, I was also concerned that:

'...the Council's new assisted pull-out policy appears to expect that, where an infirm person has relatives, friends or neighbours, those persons should be responsible for taking waste out for collection. Some elderly, infirm or disabled people will have neighbours or family who are willing to help them, but how will the Council judge that this is the case? Indeed, I question whether it is reasonable for the Council to operate a policy that depends on the goodwill of family members

or neighbours. I am also concerned about how the Council can apply this policy and believe that, in particular instances, it could lead to service failure.'

Mr C made a number of complaints regarding the policy. I did not uphold the complaint that the Council failed to consult prior to changing the refuse collection arrangements, but I did find that they failed to respond to Mrs C's needs; provide suitable refuse arrangements for Mrs C; and act on advice from Mrs C's general practitioner.

I recommended that the Council:

- (i) carry out a review of their new assisted pull-out policy and consider whether it is appropriate and sufficiently detailed;
- (ii) apologise to Mrs C for their failure to provide her with an appropriate service from the time at which the new arrangements were introduced until her hospitalisation;
- (iii) apologise to Mr C for their failure to assess and consider his mother's individual needs, despite his assertions that she could not use the new service;
- (iv) make a payment to Mrs C, in recognition of the fact that she was not provided with a service to which she should have been entitled from the time at which the new arrangements were introduced until her hospitalisation and for the time and trouble her son, Mr C, was put to in pursuing a complaint on her behalf; and
- (v) put a system in place to ensure that correspondence received from GPs and other medical professionals on behalf of customers is acknowledged and given due consideration.

Handling of planning application; complaint handling:

Perth and Kinross Council (200501996)

A Company complained about the Council's handling of their application for a planning agreement and failings in the Council's complaints procedure. I did not uphold the first complaint but I did find that the Council had failed to comply with their complaints procedure. I recommended that the Council issue the Company with an appropriate reply to their complaint and apologise for their failure to deal with it in accordance with their published complaints procedure.

Complaint handling:

The City of Edinburgh Council (200500907)

The complainant, Mr C, was concerned that there had been excessive delay by the Council in arranging the Social Work Complaints Review Committee (CRC) he had requested. I upheld the complaint and recommended that the Council review their procedures for arranging CRCs and make a small payment to Mr C for the unnecessary delay in his case.

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DECEMBER 2006 REPORTS

Health

Of the four complaints about the health sector this month, I partially upheld two of the complaints, and did not uphold the other two.

Clinical treatment:

Tayside NHS Board (200503209)

I did not uphold the complaint that the Board failed to properly manage an intravenous infusion, resulting in an extravasation injury, but I did uphold the complaint that the Board failed to follow the appropriate policy and procedures with respect to such an injury. I recommended that the Board make a written apology to the patient for the failures and revise the current procedure for referral to plastic surgery of extravasation injury inpatients.

Clinical treatment; complaint handling:

Borders NHS Board (200503586)

The complainant, Ms C, raised a number of concerns about the treatment plan she received from a physiotherapist and the handling of her complaint about this treatment. I upheld the complaint that the physiotherapist failed to provide suitable clinical treatment and partially upheld the complaint that the Board failed to deal with Ms C's complaint properly. I recommended that the Board incorporate the events of this complaint into future training / development sessions for physiotherapists to illustrate the importance of appropriate levels of record keeping.

I did not uphold two other complaints in the health sector this month, about the following issues and bodies:

Care and treatment:

A GP Practice, Argyll and Clyde NHS Board now Greater Glasgow and Clyde NHS Board) (200501821)

Clinical treatment; diagnosis:

Lothian NHS Board (200500918)

Compliance and Follow-up

In line with SPSO practice, my office will follow up with the organisations to ensure that they implement the actions to which they have agreed.



Alice Brown. 19.12.2006

The compendium of reports can be found on our website, www.spsso.org.uk

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