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. 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.

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…..’
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
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
everly, 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.
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.spso.org.uk

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