

The Highland Council

Education, Children and Adult Services Committee 14 January 2015

Agenda Item	16iii.
Report No	ECAS 16/15

Report by Director of Care and Learning and Depute Chief Executive

Complaints Review Committee Outcome

Summary

The purpose of this report is to set out the findings and recommendations following a Complaints Review Committee held on 5th November 2015. The report also provides Members with an overview of the complaints process, and highlights to members the requirement for decisions of the Complaints Review Committee to be reported to the Education, Children and Adult Services Committee.

1. Background

- 1.1 The right of Care and Learning service users and their carers or representatives to make a complaint relating to social work services is contained in Section 52 of the National Health Service and Community Care Act 1990 which inserted Section 5B into the Social Work (Scotland) Act 1968, requiring local authorities to establish procedures for considering complaints about the discharge of their social work functions. Directions for establishing such procedures are set out in the Social Work (Representations Procedure) (Scotland) Directions 1990.
- 1.2 The Social Work Directions outline a three stage process for complaints, where complainants can request that their complaint be reviewed by an independent panel should they remain unhappy with the outcome of the formal response to their complaint at stage 2 of the process. This independent panel is called a Complaints Review Committee and its membership consists of 2 lay members and a lay Chairperson.
- 1.3 The Complaints Review Committee formally reports its decisions to the Education, Children and Adult Services Committee of The Highland Council.

2. Introduction

- 2.1 In March 2014 the complainant, who is the mother of three children, was charged with two offences of assault against a child and placed on bail with conditions that prohibited her from "contacting her children unless they were accompanied by another adult or otherwise as agreed by the Social Work department". As a result of the charges and subsequent bail conditions, two of the children were placed with their father, who has parental rights and responsibilities in respect of them, and the youngest child, whose father had died, was placed with the complainant's mother.
- 2.2 A letter was received by the Service on 5th June 2014 from the Scottish Social Services Council (SSSC), enclosing a letter from the complainant. SSSC indicated that they would not investigate, but forwarded the letter for the Council to address. The complainant's letter expressed her dissatisfaction with the treatment of her by the allocated social worker for her children. The issues were:
 1. The operation and management of the contact plan had been unsatisfactory

2. There was a lack of communication by the allocated social worker for the children
3. That the complainant was being denied reasonable rights without good cause.

3. The Investigation

- 3.1 The complaint was recorded at stage 2 of the complaints process and an investigating officer was appointed, who met with the complainant on 25th June 2014 to discuss the issues raised. The investigating officer then wrote to the complainant setting out the points to be investigated and the complainant responded with amendments to the list of issues. Twenty-two points of complaint were established on 15th July 2014 and an extended timescale was agreed due to the delay in agreeing the issues and the complexity of the case.
- 3.2 The investigating officer reviewed all information relating to the case and spoke with relevant parties to enable her to complete a report to the Head of Service. The report dealt with all twenty-two points raised and indicated those which the investigating officer considered should be upheld.
- 3.3 The investigating officer's report set out lessons to be learned by the Service, particularly when dealing with directions of bail conditions. The report indicated the importance of obtaining copies of bail conditions and, where appropriate, seeking guidance from the Council's Legal Services to assist with drawing up a plan in order to meet Service responsibilities. In circumstances where advice is sought from legal services the plan should be copied to the police or procurator fiscal, explaining the interpretation of the bail conditions and the plan drawn up to meet them. Where the Service is unable to provide support workers for supervised contact, then a contingency plan should be drawn up where family members are considered. If a contingency plan is not possible then liaison should take place between social work and the police or procurator fiscal to discuss other possibilities in relation to bail conditions.
- 3.4 The Head of Service wrote to the complainant on 14th August 2014 setting out her findings, based on the investigation report provided. Sixteen points of complaint were upheld. Six points were not upheld.

4. Request for Complaints Review Committee

- 4.1 A further letter, addressed to the Director of Care and Learning was received from the complainant on 8th September 2014. The complainant expressed her thanks for the thoroughness of the investigation, but advised that she was not completely content with the conclusions reached, and that the letter did not sufficiently detail the outcomes, rectifications and proposals. The complainant asked that her case be heard by the Complaints Review Committee.

5. The Complaints Review Committee

- 5.1 The Committee noted the outstanding issues and agreed to consider these, noting that two of the points were linked and would be dealt with together.
- 5.2 **Point 1:** The legal reasons/powers used to make decisions about where the complainant's children live. The complainant required a legal document and the person's name who granted this, allowing the children to be removed from their home.

- 5.3 The complainant was of the view that the removal of her children from her home was illegal, and that there was no formal exercise of any legal powers enabling the Service to remove her children. The Committee noted that when she was arrested in March 2014, the complainant had agreed to her three children being placed temporarily with her former partner at his property. She indicated that this consent was short term. However, the former partner had parental rights and responsibilities in respect of the two older children and was entitled to require that those children remain with him. The Committee was satisfied that the Service did not require to exercise any legal powers for the two older children to remain with their father. The Committee considered that it should have been made clear to the complainant that her former partner was in a position where he could determine matters concerning their children's welfare. As a result of this lack of understanding, there were further misunderstandings which then arose about the exercise of contact. The complainant did not understand why she was not allowed to exercise contact with her two older children in the same way that she did with her younger child, who was placed with the maternal grandmother with contact supervised by the grandmother.
- 5.4 The Committee accepted that the father of the two older children had the right to make decisions about the complainant's contact with those children. However, only the complainant had parental rights and responsibilities in respect of the youngest child. While the complainant accepted that she could not have unsupervised access with this child, the Committee noted that the social worker had not explored whether it would be possible to accommodate this child with the complainant if, for example, a member of her family resided with her, despite the complainant asking the social worker to do so. The Committee considered that the option for the complainant to care for the youngest child in her own home with the support of her family should have been explored by the Service.
- 5.5 The Committee accepted that appropriate decisions were made in respect of the two older children, albeit the reasons for these decisions were not properly communicated to the complainant. However, the position in relation to the youngest child was different and the Committee found that there were failings in communication with the complainant. Although it would appear that the complainant supported the child living with his maternal grandmother, it did not appear that the Service had discussed with the complainant how the child's residence could be arranged in terms of the bail conditions. **This complaint was upheld in part.**
- 5.6 **Point 2:** The allocated social worker had said that the complainant's family could not give exact parental advice to her as another reason for not allowing them to supervise contact and she would like an explanation of this.
- 5.7 The Committee clarified with the complainant that she was, in fact, referring to the Service's failure to allow her family unsupervised contact on the basis that they had taken the view, without assessment, that the Service did not believe the complainant's extended family was capable of being impartial. It was clear to the Committee that there had been a communication breakdown about the role the complainant's family could have in her contact with the older children, which was exacerbated by the role that the father played in that his consent was not forthcoming. The Committee considered that it was incumbent on the Service to clarify with the complainant exactly what this complaint related to. On the basis that no clarification had been sought, and therefore, this element of the complaint had not been investigated, and **the Committee made no finding in this respect.**

- 5.8 **Point 3:** There is also a lack of clarity around contact between grandparents and the children.
- 5.9 The Service confirmed, having heard the complainant's presentation, that this complaint should have been upheld and that there should have been more communication about the role the grandparents could play in both their own contact and the supervision of contact with the children.
- 5.10 **Point 4:** The complainant felt that the social worker had taken a personal vendetta against her and that there had been no communication between them both recently. She felt that when they were in communication the social worker had been very changeable towards her.
- 5.11 **Point 5:** The complainant felt that the social worker had a better relationship with her ex-partner and that she listened to him and met with him and that the complainant was excluded from this.
- 5.12 These two complaints were considered together. The Committee noted that the complainant felt that the social worker had a personal vendetta against her and that she felt that her communication with the social worker was difficult to maintain, and she referred to texts and messages to the social worker frequently being ignored. She also referred to the social worker talking to members of her ex-partner's family outwith her presence and not relaying concerns on to her. The Service agreed that there had been a breakdown in communication in this respect, and the social worker should have been aware of this. It was considered by the Service that there should have been a change of worker and that this had not taken place because the worker was due to retire and a new social worker would then be allocated. The Service accepted that a new social worker should have been allocated regardless of the retirement of the member of staff, as it was clear there had been a communication breakdown. However, the Committee heard no evidence of a personal vendetta, and accepted that it would be difficult to establish this. The Committee accepted that whilst they could understand why the complainant had taken this view, there was no evidence to support this. The Committee accepted that communication had been poor between the complainant and the social worker, and on the basis of the phrase about the possibility of the social worker having a personal vendetta against the complainant being removed, this complaint should be upheld. **This complaint was upheld in part.**
- 5.13 **Point 6:** An action point from the last Child Protection Plan meeting was to refer the cases to the Children's Reporter and this does not appear to have been done.
- 5.14 The Committee noted some dubiety about the stage at which the Service sent reports to the Children's Reporter's Office, which would have meant that a referral had been made to the Reporter to consider whether there was a need for compulsory measures of supervision. The social worker had indicated that this referral had been made in April, but it was apparent that no such referral had been received by the Reporter until June. Although the investigating officer had requested information concerning this as part of her report, she had not seen any evidence that a referral had been submitted in April. The Committee took the view that such evidence should have been so requested and, at that stage, a referral to the Children's Reporter was appropriate, given that charges were still outstanding against the complainant. This point should have been explored by the investigating officer in her report and this was accepted by the Service. **This complaint was upheld.**

6. Conclusions

- 6.1 The Committee commended the speed with which the Service dealt with this complaint, which was detailed and complex. The Committee understood that the complainant did not have care of her children for five months and this was a distressing experience for her family. However, it was clear that this was not as a result of any input from the Service, but as a result of charges which had been made against her which ultimately were not proceeded with by the Procurator Fiscal.
- 6.2 The Committee noted that it took a period of five months for the charges to be dropped following the children being interviewed by the police in March 2014. As a result of the delay, bail conditions remained in place for the five month period whilst the complainant did not have care of her children and the Service was required to work within the confines of those. During that time the care of two of the complainant's children was provided by their father, who had parental rights and responsibilities, and it was his view that the complainant should not have contact with the children while criminal charges were outstanding. It was apparent that the children's father also took the view that the complainant's contact could not be supervised by her family. It was not clear to the Committee that this position was understood by the complainant and it was apparent that the situation in which the complainant found herself was contributed, to a large extent, by factors outwith the control of the service. The Committee noted that the allocated social worker should have made this clear to the complainant so that she understood the position and could have sought legal advice on these issues. It was not clear to the Committee whether the Service had recommended to the complainant that she seek legal advice, although it was indicated that generally, in cases where there were disputes between parents who both had parental rights and responsibilities, such advice would be given.
- 6.3 The Committee noted that the relationship between the complainant and the children's social worker had entirely broken down. The complainant perceived, the Committee considered with some justification, that the social worker was not acting with a view to the children being returned to her care, and that she sought to favour the older children's father over her. The Service accepted that, had it not been for the fact that the social worker was about to retire, it was likely there would have been a change of worker. Whilst noting this, the Committee took the view that in cases such as this where the communication breakdown is beyond repair, that a change of worker should be put in place.
- 6.4 The Committee endorsed the learning points that the investigating officer had noted in her initial report, insofar as they related to bail conditions. It was clear that where bail conditions have such a significant impact on the Service user's family life, that it is critical that they are properly understood and all parties are aware of the implication of them.
- 6.5 The Committee noted the concerns that the complainant had about the complaints that had been upheld by the Service, in that although many complaints had been upheld it was not always apparently to her what had been done to address these and, specifically, when such complaints included requests for information this had not always been provided. The Committee took the view that where this was the case, that the Service should make it clear to a complainant what has been done to address issues which have been upheld.

7. Committee Recommendations

- 7.1 In cases where there has been a total breakdown in communication between a social worker and a service user consideration should be given to an immediate change of worker.
- 7.2 In cases where the Service upholds all or part of a complaint it should be made clear to the complainant how the errors which led to the complaint occurred and what is being done to prevent a recurrence. A complainant should be advised what action is being taken to address their complaint and where such complaints include a request for information this information should be provided.

8. Implications

- 8.1 There are no resources, legal, equalities, risk, climate change/carbon clever, Gaelic or rural implications arising from this report.

9. Recommendations

9.1 Members are asked to :

- Note that the Complaints Review Committee met to consider this case, and the findings.
- Note the recommendations made by the Complaints Review Committee.

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Date	5 January 2015
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