

TYNWALD COMMISSIONER FOR ADMINISTRATION

REPORT ON CASE TCA 1904

Complaint

1. Mr G complained about the actions taken by Social Workers employed by the Department of Health and Social Care (DHSC) in respect of his wife.

Background

2. At the time of the complaint Mr and Mrs G were living in a house, which Mrs G had inherited from her father, and which was situated on the outskirts of a village. They were both in their 80s and Mr G stated that his wife suffered from Alzheimer's Disease. This diagnosis was confirmed by DHSC.
3. Mrs G received support from Social Workers. In 2018, a Social Worker and Social Work Assistant became involved. Mr G was unable to take his wife to medical appointments so the Social Work Assistant did so and spent time building a relationship with her. In 2018, Mrs G's G.P. suggested to Social Services that she might benefit from respite care. She had a very painful knee which required bed rest. The Social Workers discussed this with Mr and Mrs G and arranged for her to attend a facility for that purpose, initially for one week which was extended for a further week. Mr G was reluctant, anxious about the cost but was told that it would not cost him anything. It was then suggested that Mrs G stay longer but Mr G suspected that Social Services intended that she should remain permanently and refused to agree a further extension. After this, he received an account for the costs of the respite care. This gave rise to his first complaint that the Social Workers had connived to deprive Mr and Mrs G of their home.
4. Following Mr G's complaint on this aspect, an investigation was initiated by DHSC to be carried out by a member of the Care, Quality and Safety Team. He sought to meet Mr G to discuss the complaint but Mr G imposed conditions declining a meeting unless a document in the possession of DHSC apparently signed by Mrs G was released to him. The Investigator was unable to accept this condition, so a meeting did not take place. However, having spoken to the Social Workers and considered the Social Services' file, the Investigator concluded that the explanation as to costs was inadequate and that Mr G should have been told explicitly that DHSC would fund any additional sums which were not covered by Mrs G's Social Security benefits. He recommended (and DHSC accepted) that any outstanding costs should be waived.
5. Mr G was not satisfied because, by the date of the letter in March 2019, other issues had arisen, including the refusal to release to him the document purportedly signed by his wife which he believed had been fabricated by the Social Workers. Other complaints related to

the investigation by the member of the Care, Quality and Safety Team because he had not investigated all issues; the failure of the Social Worker to apologise for the distress caused to him when he received the invoice for respite care; DHSC's refusal to accept a document purporting to give him authority to access his wife's records and its refusal to give a waiver in respect of any care costs incurred in the future. Finally, he complained that DHSC was denying his wife access to services to which she was entitled.

At this stage Mr G contacted me and I had a meeting with him but took no further action while DHSC completed its internal procedures.

6. These complaints were investigated by a member of the DHSC Complaints and Investigation Team. She did have a meeting with Mr G in May 2019 and was able to obtain more detail about the various complaints. She completed her Report. In a letter to Mr G sent in June 2019, she set out his complaints and rejected them save that relating to the undertaking to waive future fees and access to his wife's letter. These requests had been referred to the Attorney General's Chambers who subsequently wrote to Mr G on 22 July 2019 refusing his request, on the grounds that there was no medical evidence that his wife lacked mental capacity and the documents could only be released if she consented. In respect of the cost of future care, it would be discussed with Mrs G at the time it was required. The letter concluded:

“the DHSC is of the view that an up to date assessment of Mrs [G's] physical and mental health would be of benefit to her and to ensure that she is receiving all necessary and available intervention. It is very much hoped that you will act in your wife's best interests, engage with the social work team and not prevent access to Mrs [G].”

7. On the same day, a senior Practitioner from the Older Person's Community Work Team wrote to Mrs G stating that until such time as DHSC were satisfied that she personally had given instructions, it would maintain her confidentiality in respect of any matters involving her health and care. The letter went on to make recommendations for an assessment acknowledging that she could not be forced to accept any care which might be advisable and which might incur a cost. It would be for her to discuss with her husband, if such a situation arose.
8. As soon as he received the letter of 18 June, Mr G contacted me seeking confirmation that I would accept the case. It seemed to me that many of the complaints concerned the actions and procedures adopted by the social work team and that this might fall within the remit of the Social Care Independent Review Body (“the IRB”). I wrote to the DHSC on 30 June seeking their view as to my involvement and received a response on 15 July, confirmed on 23 July after discussion with the Acting Chief Executive, that DHSC thought that the “preferable route” would be for me to review the complaints rather than a reference to the IRB because Mr G was unlikely to perceive the IRB to be “impartial” or “unbiased”.

Investigation

9. As explained in paragraph 5 above, I had interviewed Mr G at his home in the presence of his wife on 16 April 2019 and had realised that he had not exhausted the DHSC complaints procedure so that I was unable to continue my investigation at that time. When I met him, Mr G explained that the problems he encountered with Social Services began in December 2017 when he went to London for 3 days, leaving his wife at home. A lady who lived in the village called in to provide homecare for his wife. On his return he received a visit from someone from the Homecare Team in Ramsey together with a Social Worker. They suggested that his wife should have an emergency call bell or “alert” system. Mr G explained that it would be too expensive, and they could not afford it. The matter was not pursued. Mr G explained that his wife did not know people and did not go out. The Social Worker did, however, take Mrs G to a day centre but there were no further visits from the Social Worker between February and September 2018. However, a Social Work Assistant became involved and took Mrs G to appointments at Noble’s Hospital and with her G.P. After one such visit in April or May the Assistant told Mr G that the G.P. had advised that Mrs G should have rest and recuperation and she could arrange respite care. Mr G was suspicious, stressing that they could not afford it and it would have to be at “no cost”. He was assured that there would be no cost because Mrs G was in receipt of Social Security benefits. He was told that the Social Work Team would apply for funds. This they did and the application was approved in July.
10. On 3 September 2018 Mr G was told a room would be available the following Sunday. He was again assured that there was no cost. He was then told that the respite care would be extended for another week. He realised that there might be a cost so he sent an email saying that she would be coming home after that week.
11. On 19 September, the Social Worker, whom he had not seen since December came to see him with the Assistant and told him that his wife had expressed a wish to stay there permanently. As he understood it their pension would be split and “his” benefits reduced to pay for his wife’s care. He stressed to me, on several occasions that everything was held jointly. Following this meeting, Mr G went to Markwell House and enquired if the Social Worker had been given information by them about the benefits. He told me that his wife was in receipt of attendance allowance, but Social Services had no right to know this and, if they had been told, it was a breach of GDPR. On the next day, Mr G spoke to his wife and asked her if she knew how much it would cost and whether she did want to stay in the facility on a permanent basis. He said she could not remember agreeing to anything but after he left the Social Work Assistant came and completed a document which prevented him seeing his wife on the Saturday or Sunday.
12. From my subsequent inquiries, Mrs G was in respite care between 3 and 25 September. On 20 September, Mrs G signed a “Residents Visitors Rights Document” (the “RVRD”) stating

that she did not wish to see Mr G. Mr G visited the next day, after being made aware of his wife's wishes. He refused to leave the premises, so the staff allowed him to talk to his wife. After that meeting a further discussion took place when Mrs G again said that she did not wish Mr G to visit her before her return home. Despite this, Mr G again visited on 23 September. He was told by a member of staff that his wife had signed a RVRD stating that she did not want him to visit. Mr G stated that the document was "obsolete" as he dealt with all official documents for Mrs G. He stated that she lacked capacity and all legal paperwork in relation to her was to be signed by him. Mrs. G was then asked in Mr G's presence if she wished her husband to visit and indicated that he should remain.

13. On Monday 25th his wife was seen by a doctor and then returned home. It was after this that Mr G received an account for £1,708 in respect of his wife's 2 week stay. He contacted Social Services and had two meetings with a Senior Manager, both of which Mr G recorded. He wanted the account withdrawn and an apology from the Social Worker for her actions and comments. At the second meeting towards the end of October, the Social Work Assistant was also present. It was suggested that she should start working with Mrs G again but he no longer trusted her. He asked to see all the computer records and notes made by Social Services about his wife but was told that they were confidential. He then completed a Subject Access Request, but he was told that the documents could not be disclosed because Mrs G had told the Assistant that she did not want her records shown to her husband. Mr G said that the note apparently dictated by his wife was dated 7 October, but he did not make his request until 29 October. In respect of this complaint, I believe Mr G is mistaken. The document apparently dictated by Mrs G is dated 7 November and so post-dated his Subject Access Request in respect of his wife's records. He said that he could not go to the Information Commissioner because there had not been a refusal to release the data: it just could not be disclosed to *him*.
14. In December 2018, he received a further visit from the Senior Manager and the Assistant Social Worker to discuss his wife's needs. It was agreed that she should receive visits from the homecare team three times a week. This level of care was never provided because of lack of resources. Homecare provided one visit each week which was inadequate. It was during this December visit that the Assistant explained that she had written the note dictated by Mrs G. He subsequently typed up a note which his wife signed, explaining to me that in view of her mental condition he spoke for his wife.
15. Mr G told me that after the member of the Care, Quality and Safety Team was appointed following his complaint, Mr G refused to see him because he would not provide Mr G with the document his wife was alleged to have signed. The fees were waived after the Report into his complaint was made but he was still expected to pay for Sunday papers which had been ordered for his wife. This had been a waste of money since she was no longer able to read. He also thought that the delivery charge was exorbitant.
16. Whilst not willing to discuss his finances, Mr G did tell me that the house in which they were living and which required repairs and refurbishment, had been owned by his wife's

father. He was concerned as to what would become of his wife if anything happened to him and had sought advice from advocates. He had also been told that he should get a power of attorney. The advocates had advised him to go to see the G.P. and request him to assist in getting social work involvement. A Social Worker had been allocated but Mr G was suspicious because her Manager reported to the Senior Manager who had visited him and whom he considered dishonest. Mr G was concerned to know who decided what was in his wife's best interests, stressing again that everything was joint property. I was not sure whether this included their home and if so whether they were joint tenants or whether, as is more usual on the Isle of Man, tenants-in-common, which might have an impact on funding future care, but I did not pursue this.

17. Mr G also spent some time explaining about a court case he had brought against a Government Department, which had lasted a number of years and in which he was ultimately successful. He also mentioned a dispute he had with a neighbour about land he and his wife owned. The dispute had continued over 30 years and was unresolved.
18. Throughout the conversation, which lasted nearly 2 hours, Mrs G sat in a chair with her legs up. She slept for most of the time and when awake, made no contribution and only on one or two occasions did her facial expression indicate that she was aware of the discussion. Just as I was leaving a visitor arrived. Mr and Mrs G's daughter, who lived about 5 miles away, came in and Mrs G became positively animated. She asked her why she had come and was told that "he asked me to". This was a clear reference to Mr G, and it is possible that the visit was arranged more for my benefit. I exchanged pleasantries with the daughter but left shortly thereafter, leaving her mother to enjoy the company.

Discussion

19. This complaint has raised not unfamiliar problems about the care of the elderly and the understanding of Social Security benefits. Mr G had been adamant that all the household income was "joint". Indeed, in one of his emails to DHSC, Mr G stated:

"Joint finances are for the maintenance of the property and our life together: that is the way it has been for the past 49 years and it is not going to change now. Neither can they be split under any conditions.

I look after the joint finances and therefore I speak on behalf of my wife when finances are concerned."

From that it is evident that Mr G was not, in his mind, collecting his wife's benefit for her use. It had become an integral and essential part of the household income.

20. In this, Mr G was wrong. Some benefits are personal to the individual who has been found entitled to them. One such benefit, which Mr G confirmed his wife received, is attendance

allowance. This is paid to someone, who as a result of their medical condition, incurs additional costs. They may require special food for a diet, incur extra heating costs because of their immobility or cannot use public transport and incur the costs of taxis to travel to hospital or doctor appointments. When they receive in-patient treatment, whether in hospital or in a care home, the attendance allowance (and other benefits) will go towards the costs of care. If the individual has no income or capital over and above their benefit entitlement, the Department will cover the deficit. Mr G objected to the account he received for respite care. It was for the full cost of care, no means assessment having been done and should not have been sent to him. The Department investigated and the account for care costs was withdrawn, When that was done, DHSC rectified any mistake and I do not have to consider it further.

21. However, Mr G made a further demand. He wanted an undertaking that no charge would be made for his wife's care, should she be admitted to long terms care. DHSC sought advice from the Attorney General's Chambers and on the basis of that advice his request was refused. If a Department seeks advice from the Attorney General, it is required to follow it. Its refusal to provide an undertaking cannot amount to maladministration for the reasons given by my predecessor in TCA 1818.

22. Another area of dispute is the status of two notes referred to above. The first note apparently dictated to the Social Work Assistant by Mrs G reads as follows:

"I, [Mrs G] understand that my husband [Mr G] may be able to access my case records and I oppose this. I do not want my husband to have access to any of my information, I raised this issue with the social work assistant [X] on 7/11/2018. I do not recall signing a subject access request to obtain my file notes. I think I would be wise not to allow my husband to have access to this information."

The document, which is handwritten, concludes with Mrs G's initials and surname in full and is dated 7 November 2018. DHSC assure me that Mrs G signed the document and point to the distinctive "F" also found in other documents which she had signed.

23. The other document is typed, and the typeface matches that of letters sent by Mr G. It states:

"My name is [Mrs G]
Date of birth [given]

I am writing this note of my free will.

I want my husband to speak for me and on my behalf and handle my affairs – formal, official, legal, financial and others.

I say this because I believe my husband has my best interests at heart.

Signed"

Mrs G's name then appears typed in full but there is no signature, neither is the document dated.

24. I saw Mrs G in April 2019. At that stage, had I been doing so for the purposes of taking instruction for drafting a will, I would not have been prepared to do so. This is because at that meeting I would not have been satisfied as to her testamentary capacity. I am, however, conscious that lucidity does fluctuate, and Mr G suggested that she was more alert in the morning. In a long and varied career in the English Civil Service, some years ago I worked for the Official Solicitor, one of whose functions was managing the affairs of and conducting litigation for people who were unable, by reason of mental incapacity, to manage their own affairs. I have, therefore, had exposure to problems of the type in this case. One important thing to have in mind is that a person like Mrs G is more susceptible to giving answers they believe their interrogator wants to hear. The Social Work Assistant has stated that Mrs G volunteered the information, but I do not know in what circumstances and I would be very surprised if she had spoken of a Subject Access Request without prompting. It is possible that, if asked whether she wanted her husband to see her medical records or her file, she would express reluctance. Equally, the document Mr G has produced uses language and concepts that Mrs G is unlikely to have used or understood. Mrs G would also have been influenced by how questions were asked. I am therefore driven to the conclusion that neither can be relied upon to indicate Mrs G's wishes. The Department were doing their best to assess Mrs G's mental capacity, given the limited contact they had with her, but had not completed the assessment. Until the assessment was completed, they were required to treat Mrs G as a competent adult. Mr G however had decided that she was not and, as is evidenced by the comments made in correspondence and quoted above, had effectively taken control of her affairs but had no legal authority for doing so.
25. I was awaiting the outcome of the assessment, when I was told by DHSC that Mrs G had died suddenly at home on 31 August 2019. The inquest which was held subsequently recorded a verdict of accidental death caused by laryngeal obstruction by a food bolus due to, or as a consequence of, Alzheimer's disease with ischaemic heart disease contributing to death. In his subsequent emails to me about the progress of the investigation, Mr G has made no reference to his wife's death.
26. As explained Mr G made enquiries of the Social Security Division of the Treasury about what he thought was a breach of GDPR in that DHSC was informed about his wife's benefit payments. Government Departments do exchange information provided that it is lawful for them to do so. Mrs G's benefit was in part intended to fund her respite care, so it was lawful to notify the Treasury of her changing circumstances. Mr G's concerns were misplaced.

Conclusion

27. DHSC were dealing with a sensitive situation. Mrs G was a vulnerable adult whom it was its responsibility to assist. Perhaps, because of his past experience with Government Departments, Mr G was suspicious of officials and wanted to keep his family's affairs private. He needed assistance from DHSC, and complained when it was not made available to him, but he wanted it on his terms

In attempting to manage the situation, the Department made mistakes. As has been accepted, Mr G should not have received an account for his wife's respite care, without a means assessment. It was unfortunate that, having considered in December 2018 that Mrs G needed more home help than that provided once a week, there were no resources to increase it, but Mr G believed it was a deliberate decision not to provide help to his wife because of his dispute with the Department. I am satisfied that this was not the case: more could perhaps have been done to provide support. Had the social workers had more continuous contact with Mrs G, she might have been given greater priority in the allocation of scarce resources. However, none of this amounts to maladministration or negligence.

28. In all the circumstances and for the reasons set out above, I do not uphold Mr G's complaints against DHSC.
29. In accordance with my usual practice, I sent Mr G this report in draft for comment. He responded stating that he had read through it, and considered that there were inaccuracies but did not intend to provide detailed comments because he believed that it was "not proper to talk about someone who is no longer with us". He went on "My wife died in August 2019 and with the findings of the Coroner [of Inquests] all matters are closed for ever.". He asked me not to publish my findings "since they are of no value". He concluded "It is a great pity that Manx law does not recognise religious values because local law does no, alone, rule one's life".
30. I responded explaining that under the Tynwald Commissioner for Administration Act 2011, I was required to report on any investigation I undertook. He accepted that this was the position, and thanked me for what I had done.

Angela Main Thompson
Tynwald Commissioner for Administration
March 2021