

Complaint

Two young children with a profound hearing disability attended a Centre (accompanied by their mother) for speech and language therapy. The family received a letter inviting them to a meeting with Board members and the manager of the Centre to discuss a complaint in relation to the children's mother. The complaint was not specified, but there had been growing personal animosity between the children's mother and the manager of the Centre.

The children's mother was informed at the meeting that she was required to attend a further meeting with staff members to demonstrate her goodwill to the manager, otherwise services would be terminated. There was no documentation of the agreement. The mother continued to attend the Centre with her children but did not make arrangements to set up a further meeting. However, in the interim, the family wrote to the Centre expressing concern that access to services would be dependent on such a demonstration, and also spoke to a member of the Board. No further response was received from the Centre, and services were subsequently terminated by written notice, effective immediately.

The Commissioner considered that any decision to terminate services should be done in a manner that creates the least amount of disruption. In this case, there was no clear understanding between the parties of the exact agreement that had been reached, and terminating services abruptly removed the opportunity for continuity of care. The Commissioner also questioned the effectiveness of the proposed meeting. The Centre was found to be in breach of the Code, and asked to apologise to the family.

6 May 2003

Dear Mr B
A Disability Provider

Our Ref: 02HDC03627
Complaint by Mr and Mrs A

Thank you for your letter dated 1 May 2003 in response to my provisional opinion. I also note your verbal offer of 6 May 2003 to meet with me to discuss the complaint by Mr and Mrs A.

You referred to a number of matters in your letter. I do not intend to respond to each issue as some of the matters you raised are fully covered in my report. In addition, you have not, in most instances, provided any new information. However, I wish to provide you with further comment in response to your letter, in relation to the following issues:

Names have been removed to protect privacy. Identifying letters are assigned in alphabetical order and bear no relationship to the person's actual name.

- termination of services
- record of meeting
- mediation.

Termination of services

You state that it is clear that a meeting was required by the disability provider (the Centre) or else services would be terminated. You refer to paragraph 2.44 of Mr A's letter of complaint which stated:

“He [Mr B] said that if we did not attend the meeting, our children's therapy would be withdrawn.”

While I accept that there was general understanding that services may be withdrawn if the meeting did not occur, there was no actual notice of termination, and as such the overall position was unclear. I note that you commented in your letter of 3 February 2003 to me, as follows:

“Because the way forward was a meeting within two weeks, we did not state expressly that if [Mrs A] did not make contact that services would again be suspended.”

In my opinion, any decision to terminate services requires express notice, particularly where enforcement of the termination is to take place immediately. The disagreement between staff at the Centre and Mrs A had no relation to the children's behaviour and it was the children who were immediately affected by the actions of the Centre to cease providing services. You advised in your letter that it was “equally clear that such a meeting was required”. Given that the Centre considered that the meeting was essential it follows that the consequences of not meeting the requirement should have been clearly recorded and made available to all parties affected by the decision.

Record of meeting

In my provisional opinion I was critical that there was no formal record of pre-conditions for continuing services. You commented in your response that there were no formal minutes of the meeting, as the meeting was to attempt to “clear the air and move forward”. However, my concern is not so much the lack of formality, but simply that there needs to be an accurate record of any agreement reached regarding the conditions of service delivery.

You submitted that Mr C (a barrister), who was present at the meeting of 12 November, has provided the Centre with a summary of the meeting in letter form. I note that the Centre has advised previously that neither the meeting nor the agreement was documented. While it may have been helpful to have provided this letter, I note that you have not stated that Mr C's letter records the agreement reached. More importantly, written notice or record of any agreement reached (if it exists) was not provided to Mr or Mrs A.

Mediation

You re-iterated your opinion that mediation would provide an appropriate forum to resolve this complaint and asked that Mr and Mrs A be approached with a view to mediation of their complaint. I acknowledge that the Centre has suggested mediation

several times during the investigation and agree that mediation can be a particularly useful method of dealing with complaints, particularly those relating to communication issues. This complaint falls into that category, indeed, communication issues pervade every aspect of this complaint.

The option of mediation has been discussed with Mr and Mrs A. However, Mr and Mrs A are not interested in entering into a process of mediation with the Centre. Mediation is not an effective tool unless both parties are willing to enter into discussions.

Invitation to meet you

Although I appreciate your offer to meet to discuss the complaint, I do not consider a meeting is necessary before forming my opinion. However, I would be happy to visit the Centre at some stage in the future.

Complaint

In March 2002 I received a complaint from Mr and Mrs A concerning the termination, in November 2001, of the provision of disability services to their children, Miss A and Master A. Both Miss A and Master A are profoundly deaf and have cochlear implants. They received disability services in the form of speech and language therapy from the Centre from the age of 15 months and 4 months old respectively. The relevant facts in the complaint are as follows:

Background

On Saturday 3 November 2001 Mrs A received a letter dated 2 November 2001 from Mr D, a member of the Board of Directors of the Centre (the Board).

The letter stated:

“I have received complaints about your conduct at [the Centre] and wish to meet with you and the Chief Executive there on Monday 12th November at 9.00 a.m.

Meantime, until we meet, further therapy and pre-school services to you are suspended.”

The letter did not specify what the complaints were, who had made them or how they affected the services provided to Miss A and Master A. However, prior to the suspension both parties acknowledged there had been personal conflict between Mrs A and Ms E, Chief Executive of the Centre. These difficulties appear to have been due in part to issues relating to fundraising activities of “[the Centre]”. It appears that there was some discussion regarding the actions of this group at a meeting of the Board (date unknown) after which Mr and Mrs A advised they had the opportunity to discuss their concerns with Mr F (an auditor), Mr and Mrs A advised that Mr F was appointed to review all aspects of the Centre management and that they were interviewed about their views, particularly in relation to Ms E. The Centre advised me that Mr F’s review was in relation to organisational strategy and was not relevant to my investigation. The Centre did not provide Mr F’s report to me for consideration.

Immediately following the suspension, Mr A telephoned Mr D and, following a discussion, Mr D advised that he would consult further with Board members. Mr D

telephoned Mr A later that day and advised that the suspension had been lifted, but that the meeting had to proceed with Ms E (the Chief Executive of the Board) and himself.

The meeting took place on 12 November 2001 at the Centre. Present at the meeting were Mr and Mrs A, Mr H (Mrs A's father), Board members Mr B and Mr D, Ms E, and Mr C (a barrister). Mr B told Mr and Mrs A that in order for their children to continue to receive services at the Centre, they must attend a meeting with Ms E and her staff. Ms E explained that the purpose of the meeting would be to demonstrate to staff at the Centre that everything was friendly between Mrs A and Ms E.

By way of background, the Centre advised me that Mrs A had refused to converse with certain team members and that this had caused much anxiety and a sense of "treading on eggshells" for team members. It was considered important for Mrs A to meet with the team at the Centre as it "was considered beneficial to meet as one unit to indicate to all involved in the children's care that the impasse had been put behind us and we were all 'one team' again". The Centre hoped that the meeting would indicate that cordial and respectful relationships with all members of the team would be resumed.

The Centre believed that, as an outcome of the meeting of 12 November, it was agreed that Mr and Mrs A were to telephone the Executive Director to set in place a team meeting within a fortnight. The termination notice subsequently sent by the Centre refers to an agreement "to arrange a meeting by November 23rd". No such agreement was documented and no formal notes or minutes were taken at the meeting on 12 November. The Centre advised that it did not state expressly to Mr and Mrs A that if Mrs A did not make contact, services would again be suspended; however, it was clear "from the entire event that the way forward was for Mrs A to meet with our Executive Director".

Mr and Mrs A said that they "understood that [the Centre] had given notice of their intention to terminate services, unless we contacted them to arrange the proposed meeting. It was not, in our view, agreed that a strict deadline of a fortnight was to apply".

Mr and Mrs A advised me that during the fortnight after the meeting of 12 November they took several steps to see whether they could agree on a different way of dealing with the matter, as they did not understand why their children's access to therapy "should be dependent on whether we attended a meeting with [Ms E]". Mr H (Mrs A's father) wrote to Mr B on 20 November advising that he "can now respond formally that [the family] has no knowledge of events which would justify an arbitrary suspension, citing 'privilege not rights', without proper process, warning or explanation". Mr H stated in the letter that he understood that "[Mr I, a facilitator] may call you to discuss the proposed meeting of [the family] with the Chief Executive and whether it is your intention to deny my grandchildren essential services if that meeting does not take place". No response to the letter was received.

It appears that Mr I contacted Ms E to see if she would agree to meet with Mr A and Mrs A by herself over a cup of tea. Ms E said that she would meet them for a cup of tea, but that the proposed meeting with her staff was still necessary. Mr I offered to

facilitate the meeting, but Ms E declined the offer, although Mr I was invited to attend the meeting.

Although Mrs A attended the Centre with her children most week days during the weeks following 12 November, she did not contact Ms E to arrange a meeting. Mrs A did speak with Mr B on Monday 26 November, when she told him that the intent was to move forward and that there had been regular contact over the past fortnight to try and find an alternative to attending a meeting. Mr A also spoke to Mr C during the second week after the meeting, and told him that he and Mrs A felt they had been treated unfairly. Mr C said he would pass the comments on.

On 26 November 2001, Mr J, the Chairman and Mr B, Board member, wrote to Mrs A. They advised that “[g]iven that you have failed to fulfil your obligation made at the meeting on November 12th, the Board has directed that [the Centre] will no longer provide your family with auditory-verbal therapy and associated services effective November 27th 2001. We suggest that you contact another audiology centre for ongoing provision of services for your children.” The letter was delivered by courier that evening to the home of Mr and Mrs A.

Final Opinion

Your response to my provisional opinion has been considered and changes made to my report where relevant, but you have not provided me with any information that has persuaded me to alter my view. I have now completed my investigation of the complaint by Mr and Mrs A.

In my opinion, the Centre breached the Code of Health and Disability Services Consumers’ Rights (the Code). In forming my opinion, I have considered information provided by Mr and Mrs A, the Centre, and another audiology centre.

Termination of services

Right 4(3) of the Code affirms a consumer’s right to have services provided in a manner consistent with his or her needs. While the Code does not confer a right of access to disability services and, accordingly, there was no requirement for the Centre to provide services to Master A and Miss A, decisions to discontinue existing services should be made in a manner that creates the least amount of disruption and facilitates continuity of care. In my view, any decision by the Centre to cease providing services to a client should, whenever possible, be given with a reasonable period of notice. This is particularly important where there are very limited resources available in the community for auditory-verbal therapy and it is difficult for parents to arrange alternative therapy.

In my opinion, the manner in which the disability services for Master A and Miss A were discontinued was inappropriate and in breach of the Code. There was no formal record of what was agreed at the meeting on 12 November 2001 and no written record provided to Mr and Mrs A setting out the requirements of the Centre in order for services to continue. There were, however, further discussions between Mrs A and staff at the Centre, and correspondence from Mrs A’s father. It is obvious that Mr and Mrs A were attempting to resolve the issue, although the Centre may have formed the view (particularly following Mr H’s letter to Mr B) that Mr and Mrs A did not intend to arrange a meeting with Ms E and her staff.

It appears that the purpose of the proposed meeting was for Mrs A to demonstrate to staff that “cordial and respectful relationships with all of the team members would be resumed”. There had obviously been difficulties between Mrs A and some team members in the past. I do not consider it unreasonable for a disability service provider to seek to ensure co-operation relationships between parent/caregivers and staff and management. However I question the effectiveness of a required meeting – with the focus on the conduct of one parent – as the means of achieving such co-operation.

In any event, it would have been appropriate to document the outcome of the meeting of 12 November so that all the parties were clear about what was required. That did not occur. The letter of 26 November terminating services was effective immediately, thereby removing any opportunity for Mr and Mrs A to arrange timely alternative services for their children.

In my opinion, in terminating services without any notice or warning, when there had been no formal record of pre-conditions for continuing services, the Centre acted unlawfully and breached Right 4(3) of the Code.

Continuity of services

Right 4(5) of the Code states that every consumer has the right to co-operation among providers to ensure quality and continuity of services. Mr and Mrs A complained that the Centre did not contact any other provider or undertake any kind of referral.

The letter from Mr J (Chairman) and Mr B to Mrs A dated 26 November 2001 referred her to another audiology centre for the ongoing provision of services. The Centre advised me that it had no reason to believe that Mrs A would not receive rehabilitation from a private provider of her choice or a government-funded service provider via another audiology centre.

In December 2001, Mr A and Mrs A met with habilitationists from the Cochlear Implant Programme, which provides services from another audiology centre premises, and were told that they could not provide regular special therapy and that the best course would be to seek the services of a private provider. Mr and Mrs A subsequently contracted the services of a speech language therapist.

I am satisfied that the Centre did attempt to direct Mrs A to another provider via another audiology centre. In the circumstances, it may have been prudent for the Centre not to offer a formal referral to another provider. Communication had broken down to such a degree that referral by the Centre may have been unacceptable to Mr and Mrs A. The lack of referral meant that it was not known, other than in a general sense, what type of services were available. Nonetheless, I consider that the Centre took reasonable actions in the circumstances and did not breach the Code in relation to this matter.

Complaint to the Centre

Mr and Mrs A complained that the Centre did not acknowledge Mr A’s letter of complaint dated 28 November 2001 or inform him of any relevant complaint procedures following the suspension of services to Miss A and Master A.

On 28 November 2001 Mr A wrote to the Centre stating that he had “strongly held concerns” that he and his wife had been “bullied with allegations” and “the consequences are now visited upon the children”. He stated that he felt “personally aggrieved” and that he hoped that “no other family will be subject to such similar treatment in the future”. He also requested a copy of his children’s files and recent video recordings.

Under Right 10(1) of the Code every consumer has the right to complain about a provider. Right 10 sets out general guidelines and time frames for a complaints process, which must facilitate the fair, simple, speedy and efficient resolution of the complaint (Right 10(3)). Under Right 10(6) a complaint must be acknowledged in writing within five working days of receipt, and the consumer must be informed of any relevant complaints procedures.

The Centre advised that in November 2001 it did not have a formal complaints procedure in place, although there is now a complaints protocol. The Centre provided no evidence that it responded to Mr A’s letter and advised me that it did not treat the letter as a “formal complaint”. It also advised that the complaint was dealt with via telephone conversations and requests from the Board. However, those contacts related to the earlier attempts to resolve issues with Mrs A rather than to Mr A’s letter.

I note that it is not entirely clear from Mr A’s letter that a response was expected. The letter could be interpreted as voicing a strong protest, rather than as a complaint requiring a response. The letter does not contain a request for further explanation or that the Centre reconsider the decision to terminate services. Nonetheless, I consider that the Centre should have treated Mr A’s letter as a formal complaint and sent a written acknowledgement with details of the complaints process and avenues available through the Health and Disability Commissioner’s Office.

Final comments

I acknowledge that Mr and Mrs A did not complain about the quality of the therapy provided to their children by the Centre. They did, however, complain about the events preceding the termination of services to their two children. For the reasons set out above, I have formed the view that the Centre breached Rights 4(3) and 10 of the Code. It appears that the complaint arose from a breakdown in communication between the parties. In particular, it appears a degree of personal animosity coloured the relationship between Mrs A and Ms E, which made attempts at resolution difficult.

In such cases a mediation will often assist resolution, particularly where there is likely to be continuing provision of services. However, Mr and Mrs A were not amenable to mediation. There is no obligation upon complainants to enter into mediation.

In response to my provisional opinion the Centre advised that it has reviewed its processes and regrets the distress caused in this case. I recommend that the Centre provide a letter of apology to Mr and Mrs A. The apology should be sent to my Office and will be forwarded to Mr and Mrs A.

Please forward the apology by 23 May 2003. The file will then be closed.

Yours sincerely

Ron Paterson
Health & Disability Commissioner