

# The City of Edinburgh Council

10.00am, Thursday 24 June 2021

## Monitoring Officer Report

Executive/routine  
Wards  
Council Commitments

### 1. Recommendations

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- 1.1 To note that a report by the SPSO into the Council's handling of a specific matter has resulted in a finding of maladministration due to undue delay on the part of the Council.
- 1.2 To note that the Council's Monitoring Officer is required, under s.5 of the Local Government and Housing Act 1989, to report to Council if they consider that in the course of the discharge of the Council's functions any proposal, decision or omission has resulted in maladministration.
- 1.3 To note that the Council has already taken action to resolve this matter and the SPSO has asked the Council to provide evidence of agreed actions by 6 September 2021 (as noted in the SPSO's final Decision Notice).

**Nick Smith**

Council Monitoring Officer

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# Report

## Monitoring Officer Report

### 2. Executive Summary

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- 2.1 The Scottish Public Services Ombudsman (the “SPSO”) has issued a Decision Notice (attached as an appendix to this report) in relation to a matter involving Social Services and Legal Services. The Decision Notice states that in the opinion of the SPSO there has been undue delay on the part of the Council. Given the finding of undue delay, the Monitoring Officer considers that he is required to report this as maladministration to Council in terms of section 5 of the Local Government and Housing Act 1989.

### 3. Background

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- 3.1 The relevant background to the matter is set out in the SPSO’s final Decision Notice, provided as an appendix to this report.

### 4. Main report

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- 4.1 Elected Members are referred to the SPSO’s final Decision Notice, as provided in the appendix to this report.
- 4.2 The subject matter of the finding is a complex cross-border legal transaction concerning the potential transfer of property in England to dependents of a person who lacks legal capacity. The Edinburgh Health and Social Care Partnership (“EHSCP”) was appointed to act on behalf of the incapacitated person by an Intervention Order granted in August 2019. Council Legal Services acted on behalf of EHSCP.
- 4.3 In parallel to the SPSO looking at the matter, the delays to the transaction were investigated by the Council’s Senior Legal Manager at Stage 2 of the Council’s Complaints Procedure in March 2021. The Senior Legal Manager provided a detailed response to the complainant and implemented increased oversight arrangements to ensure that the matter was brought to a conclusion as efficiently and quickly as possible. Both the complainant and the SPSO were satisfied with this response.

- 4.4 The matter has now concluded to the extent that all actions required by the Council have been discharged and the Council's involvement is now at an end. Evidence of this will be provided to the SPSO.
- 4.5 The matter was highly complex and delays on the part of the Council should be placed in the context of:
- 4.5.1 comparable delays on both sides of the transaction, (i.e. including on the part of the complainant's solicitor); and
  - 4.5.2 competing priorities of those involved in the transactions (notably in relation to community protection actions), which were exacerbated by the Covid-19 pandemic.
- 4.6 However, the Council accepts the SPSO's finding on the basis that there were periods of delay on the part of the Council (specifically in relation to chasing the activities of our instructed English solicitors) which had an adverse impact on the timely completion of the transaction.
- 4.7 Given the finding of undue delay, the Monitoring Officer considers that he is required to report this as maladministration to Council in terms of section 5 of the Local Government and Housing Act 1989.
- 4.8 The Council is required to provide evidence of improvement actions to the SPSO by 6 September 2021.
- 4.9 The staff involved have been spoken to in accordance with the recommendations of the SPSO.

## **5. Next Steps**

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- 5.1 The actions taken by the Council after a thorough investigation by the Senior Legal Manager demonstrated that it had taken this matter seriously and has taken steps to prevent a reoccurrence.
- 5.2 Undertaking the actions implemented by the Senior Legal Manager, which were endorsed by the SPSO, has provided additional oversight on this matter. The transaction has now concluded in terms of the EHSCP's involvement.
- 5.3 The Council will provide evidence of improvement actions to the SPSO, including feeding back the SPSO's findings to relevant staff, by the stated deadline.

## **6. Financial impact**

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- 6.1 No direct impact.

## **7. Stakeholder/Community Impact**

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7.1 No direct impact.

## **8. Background reading/external references**

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8.1 None.

## **9. Appendices**

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9.1 Appendix 1 - SPSO Decision Notice

## Decision notice

### Complaint about Edinburgh Health and Social Care Partnership - 202001087

**Date:** 4 June 2021

- a) There was an unreasonable delay in the HSCP executing the Intervention Order (upheld).

#### Summary for publication

*This summary (subject to change) will be laid before parliament and published online. Please note that it is a high-level summary which does not include the full detail of our investigation. To protect your personal information, we have anonymised it and removed both gender-specific pronouns and titles.*

C is an executor of their late parent's estate and they were seeking to sell a property in line with their parent's will. However, there is a charge on the property which relates to legal costs incurred many years ago by their other parent, A. A did not have capacity to agree that the sum should be paid, and as such, an Intervention Order was granted by the Sheriff Court for social work (with the support of the Council's legal services) to act on behalf of A regarding the charges. C complained about the length of time being taken to execute the Intervention Order.

We found that there were delays in correspondence regarding the execution of the intervention order. We noted that both the HSCP and the Council had acknowledged and apologised to C for this. Some of the delays were outwith the HSCP/Council's control due to awaiting responses from C's solicitors and the impact of the COVID-19 pandemic. However, some of the delays could have been avoided (by having clear lines of responsibility between social work and legal services and by escalating the matter internally). We considered that on balance, there had been an unreasonable delay in executing the Intervention Order. As such, we upheld C's complaint.

#### Comments



We sought comments on a draft of this decision from both parties. We received comments from both the complainant and Edinburgh Health and Social Care Partnership. This resulted in some minor changes to the following paragraph. However, the substance of the decisions remains unchanged.

Paragraph 3 has been updated to more accurately reflect the nature of Mr C's dissatisfaction, following comments from the Council that Mr C was satisfied with the manner in which the Council dealt with the complaint (following the complaint response of 3 March 2021). The Council provided me with email correspondence to evidence that Mr C was satisfied.

1. Mr C and his sibling are the executors of their late mother's estate and they are seeking to sell a property in line with her will. However, there is a charge on the property which relates to legal costs incurred many years ago by their father, Mr A, in relation to their parents' divorce and arrangements for their care and maintenance as children. Mr A does not have the mental capacity to make legal or financial decisions, including in relation to the charge over the property. On 29 August 2019 a Senior Social Worker for the Edinburgh Health and Social Care Partnership (HSCP) was appointed to act on Mr A's behalf through an Intervention Order (to act as 'Intervener') granted by the Sheriff Court. This order was granted for a Senior Social Worker:
  - to seek legal advice, if necessary on behalf of the adult with regard to charges relating to the property.
  - to sign all documents necessary to take any other steps required to discharge any charges relating to the property.
2. The City of Edinburgh Council's (the Council) Legal Services team has been providing advice to the Intervener and acting on behalf of the Intervener regarding this matter.
3. Mr C requires the actions of the Intervention Order to be executed before he can complete the sale of the property. On 12 January 2020 and 20 January 2020 Mr C made complaints to the HSCP about the lack of progress in relation to the Intervention Order. The HSCP responded to these complaints on 6 March 2020. On 8 February 2021 Mr C made a further complaint to the Council's Legal Services team. The Council responded to the complaint on 3 March 2021. Mr C was dissatisfied with the overall length of time taken to execute the Intervention Order and brought his complaints to the SPSO.
4. The complaint agreed with Mr C was that:
  - a) There was an unreasonable delay in the HSCP executing the Intervention Order (upheld).



5. Mr C told us he was seeking to achieve the following outcomes through our investigation of his complaint:
  - i. For the Intervention Order to be executed so that he can sell his late mother's property to release funds to settle his inheritance tax liability.

## **Investigation**

6. In investigating Mr C's complaint, I have carefully reviewed the documentation provided by Mr C in support of his complaints and by Edinburgh Health and Social Care Partnership and the City of Edinburgh Council in response to enquiries I made of them.
7. This letter includes the information that is required for me to explain the reasons for my decision on Mr C's case. While I have carefully reviewed all of the evidence provided during the course of my investigation, this report does not include every detail of the information I have considered.
8. The HSCP delivers services under the delegated authority of the Council and ultimately the Council is responsible for those services. I have considered both the role of the social work service and the legal department as part of this complaint.
9. Regarding complaints about the Council's legal services, we can consider complaints of maladministration or service failure. These are broad terms which are difficult to conclusively define. However, in simpler, more general terms, we investigate complaints where someone alleges fault or failure on the part of the organisation they are complaining about which has negatively impacted them. Public bodies have discretion to make a wide range of decisions, and generally we cannot comment on the merits of those decisions unless we find evidence of maladministration or service failure.

## **Complaint a) - There was an unreasonable delay in the HSCP executing the Intervention Order**

### *Mr C's position*

10. Mr C is concerned about the delay in the process of executing the Intervention Order, including the role of the social work service and that of the Legal Services team. As part of my investigation of this complaint I agreed to focus on the time period of 29 August 2019 to 13 January 2021. However, I



acknowledged that there may be further developments during the course of my investigation and I agreed to consider all the information that Mr C, the HSCP and the Council provided.

*Edinburgh Health and Social Care Partnership's and the City of Edinburgh Council's position*

11. In the HSCP's complaint response of 6 March 2020, they:
  - i. acknowledged that it took over three months between 19 July 2019 until 21 October 2019 for Mr A to be allocated a new social worker. The HSCP apologised to Mr C for this and they explained that this was due to pressures on the service and the need to prioritise Adult Support and Protection investigations.
  - ii. acknowledged that communication from social work staff with Mr C should have been better and they apologised for this. They explained that this was due to sickness absence and annual leave.
  - iii. said this is a complex legal situation which is in itself time consuming. They said that a social worker had been receiving advice from Legal Services within the Council as to the necessary steps which require to be taken to reach a resolution. They said awaiting advice from Legal Services in itself had caused delays.
  
12. On 28 July 2020, in response to my enquiries, the HSCP:
  - i. said the following actions had been implemented to improve communication going forward:
    - the transfer outcome between teams is to be clearly communicated to the service user and their family. These decisions and discussions are also to be recorded on their service user database.
    - through supervision, workers and service-users' records are being reviewed to ensure regular contact with individuals and their families is maintained.
  - ii. said that the stipulated actions of the Intervention Order were being progressed, but had not yet concluded.
  - iii. explained that the COVID-19 pandemic has had a significant impact on their services due to key staff being deployed at very short notice and/or being



personally subject themselves to some of the COVID-19 restrictions. They said this had subsequently impacted the progression of the Intervention Order.

- iv. said that they had continued to engage in conversations with both the Council solicitor and Mr C's solicitor to gather the required information. They said this was in order to clarify and confirm that agreeing and signing to the terms is of benefit to Mr A.
- v. explained what needed to happen next and the timescale for this. They said that:
  - the Council's solicitor was to review the financial information and follow up with Mr C's solicitor if any further financial information was required by 31 July 2020.
  - the Council's solicitor was to advise the allocated worker on any terms and signing of paperwork, on behalf of Mr A, with the use of the Intervention Order, ensuring that any decisions by the social worker were being made in the best interests of Mr A. They said they hoped this would be completed by 14 August 2020.
  - finalising the required documentation with guidance from the Council's solicitor was expected to conclude by 31 August 2020.

13. In the Council's complaint response to Mr C of 3 March 2021, they:

- i. acknowledged that the estimated timescale for conclusion (31 August 2020) had not been met.
- ii. explained the timeline of events from March 2020 to October 2020 and identified two significant time gaps in the file. They stated that during the first significant period of delay (between April 2020 and July 2020), they were primarily waiting for Mr C's solicitor to confirm their instructions relating to the Legal Aid debt. They said the next period of any significant delay (from 6 July 2020 to 30 July 2020) fell on the Council's side. They explained that following Mr C's solicitor's confirmation of instructions in relation to the Legal Aid debt on 6 July 2020, it was not until 30 July 2020 that Social Services sought approval from the Legal Aid board for Mr C's solicitor to deal directly with them. Regarding this second period of delay, they said it was not apparent from the file which service area of the Council or the HSCP was to be responsible for particular actions. They acknowledged that it ought to have been clearer whether Legal Services or Social Care were to be responsible for chasing up elements of this matter and, in their view, this lack of clarity



contributed to delay. They said they had discussed this aspect with their Senior Solicitor and Principal Solicitor in order that this is clearer in the future.

- iii. said it was apparent from the correspondence on file that their solicitor sought to have an initial understanding for himself of the process for dealing with the charge before seeking to instruct English solicitors. They did not agree that their solicitor had been responsible for significant delay in relation to this matter as a whole. They considered their solicitor's approach to gain an understanding of the agreement between the parties was not unreasonable. In the main, they considered that their solicitor had regularly sought to move matters forward, including chasing the English Solicitors for their estimate of cost. They noted that while this chasing could have been more intensive, this approach needs to be considered in context. They explained that their solicitor has a busy workload of often urgent community protection cases and, by this time, the matter at hand had progressed slowly (and there had been previous delay from Mr C's side).
- iv. acknowledged there were several periods of delay between September 2020 and mid-January 2021 on the part of the English Solicitors in responding to emails from their Senior Solicitor and Mr C's solicitor. They noted that their Senior Solicitor chased the English solicitor regularly seeking engagement. They stated that although Legal Services cannot directly control a third party, the matter should have been escalated to the Principle Solicitor to make it clear that it should be prioritised and to seek better responsiveness from the English solicitors.
- v. said it was clear from the correspondence on file that Mr C's solicitor had to send the same documentation to the Council (or its English Solicitors) on a number of occasions. They considered that document storage and sharing by the Council/HSCP could have been better managed. However, they did not consider this to have been a significant factor in terms of delay and stated that matters did not appear to have been held up significantly due to a lack of provision of documentation.
- vi. apologised for the delay and inconvenience caused to Mr C.
- vii. said the Principal Solicitor would take a more prominent role in relation to resolving any future delays, escalating issues to the Senior Legal Manager as appropriate. Secondly, they said they had asked for an update on the matter from the Senior Solicitor by close of business each Wednesday and Friday



until it was resolved. In turn, the Senior Legal Manager would provide a summary update to the Council's Head of Legal and Risk by close of business each Friday. They said they hoped these steps would assure Mr C that the matter would have ongoing attention of senior members of the Legal Services team, with a view to resolution as soon as possible.

14. In response to my enquiries, on 15 March 2021 the HSCP also said that:
  - i. in February 2020, the case was passed to the Council's Senior Solicitor to progress.
  - ii. from 4 November 2020 the English solicitors and Mr C's solicitor had been dealing directly with each other. They didn't come to an agreement until 3 February 2021. They said the Council cannot sign documentation until the English solicitors and Mr C's solicitor have agreed terms of discharging the charging orders.
  - iii. following an agreement being reached between all parties on 3 February 2021, confirmation of costs connected to the charging order linked to legal aid fees was to be requested by Mr A's social worker. They said this request was made to the Legal Aid Board by email on 25 February 2021. A response was received on 9 March 2021 and was passed forward to Mr C's solicitor the same day. They noted that final confirmation is required from Mr C's solicitor to accept the final charging order of the legal aid cost, before the relevant charging orders documentation can be signed off.

*Code of practice for anyone authorised under an intervention or guardianship order, published by the Scottish Government, April 2008*

15. This sets out the principles to be followed when making decisions on behalf of an adult. In particular it states that:
  - i. the code is for anyone who is authorised under an intervention order or guardianship order.
  - ii. the code applies equally to a lay person and to a professional such as a solicitor or accountant.
  - iii. whilst these codes of practice are guidance and therefore not binding, failure to comply with them may be one of the factors considered by the Public Guardian, the Mental Welfare Commission, the local authority or the sheriff in considering matters such as the continuing suitability of the person to exercise



those functions, in investigating circumstances in which the adult appears to be at risk or in applications before the court.

- iv. it is good practice to draw up a plan to implement the order, specifying when action will start, when it will be completed, and what steps have to be taken in between.
- v. if someone has a complaint against an intervener, he/she has recourse to the local authority or Public Guardian. The local authority has a duty to receive and investigate all complaints received regarding the exercise of functions relating to the personal welfare of an adult made in relation to interveners. The Public Guardian has a duty, while the adult is alive, to receive and investigate all complaints regarding the exercise of functions relating to the property or financial affairs of an adult made in relation to interveners.
- vi. a person who is dissatisfied with the actions of an intervener has recourse to the sheriff. An application to the sheriff may be made by any person claiming an interest in the property, financial affairs or personal welfare of the adult. You can also apply to the sheriff for directions under section 3(3)
- vii. the sheriff may dismiss such an application from a person challenging an interveners actions, or may give the applicant or the intervener directions. Everything will depend on the case which is put to the sheriff and his or her view of what is required by the principles in the situation which has been set out. If necessary the sheriff can vary or recall the intervention order.

## **Decision**

- 16. First, as noted above, the HSCP delivers services under the delegated authority of the Council and ultimately the Council is responsible for those services. I have considered both the role of the social work service and the legal department as part of this complaint.
- 17. I also need to explain that it is not the role of the SPSO to determine what actions are required to execute the Intervention Order or to instruct the intervener to carry out certain actions. As detailed above, the sheriff may give the intervener directions in the event that an application is brought to them. I am considering whether there have been delays which would amount to maladministration or service failure and, if so, whether there are actions that the HSCP and/or the Council should take to reduce the likelihood of further delays occurring.



18. There is no specific timescale by which the Intervention Order has to be executed. However, I have considered whether the HSCP and the Council have taken reasonable steps to progress matters.

#### Action taken between August 2019 to December 2019

19. Although the Intervention Order was granted on 29 August 2019, it appears that the HSCP did not receive the Intervention Order from the court until after 19 September 2019. I recognise that the delay in receiving the Intervention Order from the court would have been outwith the HSCP's control. In Mid-November 2019 there were discussions between social workers and Mr C's sister regarding getting the details of the charges on the house as a starting point. I have not seen evidence that any significant progress was made regarding this until 9 January 2020 when social work contacted the Legal Aid Agency to request the redemption figure.
20. I note that the HSCP have acknowledged that during this period their communication with Mr C (and his sister) could have been better. They have also acknowledged that there was a delay in allocating a new social worker to Mr A between 9 July 2019 until 21 October 2019. The HSCP apologised to Mr C for the failings identified and explained that these delays occurred due to the need to prioritise Adult Support and Protection investigations, staff sickness absence and annual leave.

#### Action taken between January 2020 to August 2020

21. I note that the HSCP received information from the Legal Aid Agency on 24 January 2020. Between 24 January 2020 and 17 February 2020 there was regular and timely communication between the HSCP and Mr C's solicitor.
22. On 17 February 2020 a social worker emailed Mr C's solicitor and chased a response on 26 February 2020 and 27 March 2020. Mr C's solicitor then got in contact on 30 March 2020. Mr C's solicitor confirmed that she intended to take instruction from Mr C and advised that she would get back in contact with the social worker and the Council's solicitor as soon as she could.
23. In a telephone call with the social worker on 30 June 2020, Mr C's solicitor confirmed that she had written to Mr C and his sister to establish if they would be able/willing to pay the legal aid charge and was waiting to hear back from them. The next written communication from Mr C's solicitor was on 6 July 2020 confirming that Mr C would be able to assist by way of advancing the sum to pay the legal aid charge.



24. On 10 July 2020 the social worker advised Mr C's solicitor that they would make contact with the Legal Aid Agency. I note that the social worker does not appear to have contacted the Legal Aid Agency until 29 July 2020. The Council have acknowledged this period of delay and that it should have been clearer whether Legal Services or Social Care were to be responsible for chasing up elements of this matter.
25. Between 30 July 2020 and 14 August 2020 there appears to have been timely communication between the social worker, Mr C's solicitor, the Legal Aid Agency, the Council's Senior Solicitor and Mr C.

Length of time to contact an English solicitor and obtain quotes between August 2020 to October 2020

26. Although I recognise that Mr C's solicitor advised the HSCP to appoint a solicitor from the England and Wales Jurisdiction in January 2020, it was a discretionary matter for the HSCP/Council whether to do this or not. The Council have explained that their Senior Solicitor sought to have an understanding of the charge themselves before seeking to instruct English Solicitors. This is a decision they were entitled to make and does not amount to maladministration or service failure. The Council were not under an obligation to follow the advice of Mr C's solicitor because Mr C's solicitor was not acting on the Council's behalf.
27. As detailed above, between January 2020 and August 2020 I have seen evidence that steps were being taken by the HSCP to progress matters. In particular, on the advice of the Council's solicitor, social work obtained information from the Legal Aid Agency regarding the charges and were awaiting information from Mr C's solicitor (which they did not receive until 6 July 2020). It is apparent that the social worker and the Council's solicitor then undertook a review of the paperwork and discussed the financial aspects of the matter. On 11 August 2020 the Council's solicitor confirmed to the social worker that they would obtain a quote from English Solicitors.
28. The Council first contacted an English solicitor to obtain a quote on 14 August 2020. I have seen evidence in the records that the Council's solicitor was in contact with the English solicitor regarding this matter on 19 August 2020, 26 August 2020, 14 September 2020 and 29 September 2020. A quote was received from the English solicitor on 30 September 2020.



29. I also note that Mr C's solicitor was updated by the social worker and the Council's solicitor on 20 August 2020, 27 August 2020, 14 September 2020 and 7 October 2020 (when she was notified of the quote obtained).
30. The Council have acknowledged that:
- the chasing could have been more intensive. However, the approach has to be considered in context given that the Council solicitor has a busy workload of often urgent community protection cases.
  - given the subsequent delays on the part of the English Solicitors to provide a quote, it may have been beneficial to seek their quote at an earlier stage. However, they noted that this conclusion involved hindsight.
31. I would note that SPSO investigations are based on the information known to the Council at the time of events and without hindsight. The Council could not have known that there would be a delay in receiving a quote from the English Solicitors and, for the reasons set out above, I am not critical of the length of time before they decided to seek a quote.
32. Overall, I have not seen evidence of an administrative or procedural failure regarding the length of time to contact an English solicitor and obtain quotes. While the Council could have chased the English Solicitor again between 26 August 2020 and 14 September 2020, I do not consider that this amounts to an unreasonable delay.

#### Delay in the English Solicitor communicating with Mr C's solicitor between October 2020 to January 2021

33. Mr C's solicitor was informed of the quote from the English solicitor on 7 October 2020. Mr C's solicitor got back to the Council on 14 October 2020 with a proposed approach and the Council passed this on to the English Solicitor on 20 October 2020.
34. The Council's solicitor chased the English solicitors for a response on 2 November 2020. On 3 November 2020 the English solicitor asked for further information from the Council. The Council provided this information on 4 November 2020 and asked if the English solicitors would be willing to correspond with Mr C's solicitor directly.
35. On 4 November 2020, the English Solicitor contacted Mr C's solicitor directly. On 23 November 2020 Mr C's solicitor contacted the English solicitor to advise that she had left a voicemail a number of weeks ago and another one that day.



Mr C's solicitor asked for them to call her back. On the same day the English solicitor called Mr C's solicitor back. On 27 November 2020 Mr C's solicitor provided information that had been requested by the English solicitor.

36. On 9 December 2020 and 13 January 2021, Mr C's solicitor chased the English solicitor for a response. On 13 January 2021 the English solicitor asked Mr C's solicitor to set out in clear terms what she was proposing. On 26 January 2021 the English Solicitor chased Mr C's solicitor for a response. On 3 February 2021 Mr C's solicitor responded to the English Solicitor.
37. The Council have acknowledged there were periods of delay between September 2020 and mid-January 2021 on the part of the English solicitors (acting on the Council's behalf) in responding to emails from their Senior Solicitor and Mr C's solicitor. I have seen evidence in the records that the Council's Senior Solicitor did regularly chase this matter up with the English solicitors. Nevertheless this does not appear to have been effective as I note Mr C's solicitors also had to chase the English solicitors on a number of occasions. Given the English solicitors are acting on behalf of the Council it is ultimately the Council's responsibility to ensure timely responses are received and I am critical this has not always happened. The Council have also identified that this matter should have been escalated to the Principal Solicitor to make it clear that it should be prioritised. Had this been escalated to the Principal Solicitor at an earlier point, this may have helped matters to progress.

### Conclusions

38. This is clearly a complex legal case. Given the complexity and number of parties involved, this will undoubtedly impact on timescales. Nevertheless my investigation has identified some delays in progressing the actions set out in the Intervention Order on the part of the HSCP/Council. Both the HSCP and the Council have acknowledged and apologised to Mr C for this. Some of these delays appear to have been outwith the HSCP and the Council's control (awaiting on responses from Mr C's solicitors and the impact of the COVID-19 pandemic). However, some of the delays could have been avoided (by having clear lines of responsibility between Social Care and Legal Services and by escalating the matter internally), I consider that, on balance, there has been an unreasonable delay in executing the Intervention Order. As such, I uphold this complaint.
39. I note that the Code of practice for anyone authorised under an intervention or guardianship order states it is good practice to draw up a plan to implement the order, specifying when action will start, when it will be completed and the steps



to be taken in between. While this does not place an obligation on the HSCP or the Council to have a written plan, it may have been helpful to have had a written plan in the circumstances of this case. It was known from the outset that implementing the order was going to involve the input from both social services and legal services. A written plan may have helped to identify clear lines of responsibility between Social Work and Legal Services and in relation to the management and storage of documents regarding this matter (which the Council have already identified as an area for improvement). I have included this point in my feedback for the HSCP and the Council at the end of this decision notice.

40. Given that HSCP and the Council have already apologised to Mr C for the delays, I have not recommended that they issue a further apology to Mr C.
41. The Council have also taken action to ensure that senior members of the Legal Services team will have ongoing oversight of this matter until it is resolved. In particular that:
  - i. the Principal Solicitor will take a more prominent role in relation to resolving any future delays, escalating issues to the Senior Legal Manager as appropriate.
  - ii. the Senior Legal Manager will receive updates on this matter every Wednesday and Friday until the matter is resolved.
  - iii. the Senior Legal Manager will provide a summary update to the Council's Head of Legal and Risk by close of business each Friday.
42. These are the kind of actions that the SPSO would usually recommend in a situation like this. While it appears that matters are now at an advanced stage, the HSCP/Council should ensure there are no further avoidable delays on their part in relation to discharging the order. I have therefore asked for evidence in relation to the ongoing oversight of this matter until final confirmation is received in my recommendations at the end of this decision notice.



Organisation: Edinburgh Health and Social Care Partnership

SPSO ref: 202001087

## Recommendations

### Learning from complaints

The Ombudsman expects all organisations to learn from complaints, and the findings from this report should be shared throughout the organisation. The learning should be shared with those responsible for the operational delivery of the service as well as the relevant internal and external decision-makers who make up the governance arrangements for the organisation, for example elected members, audit or quality assurance committee or clinical governance team.

### Evidence of action already taken

Edinburgh Health and Social Care Partnership told us they had already taken action to fix the problem. We will ask them for evidence that this has happened:

Rec. number	What we found	What the organisation say they have done	What we need to see
	<p>Under complaint (a) we found that:</p> <ul style="list-style-type: none"><li>it was unclear whether Legal Services or Social Care were responsible for chasing up elements of this matter.</li></ul>	<p>The Council said they had discussed this matter with their Senior Solicitor and Principal Solicitor in order that this is clearer in the future.</p>	<p>Evidence that the findings on these complaints have been fed back to relevant staff in a supportive way (e.g. a record of a meeting with staff; or feedback given at on-to-one sessions).</p>



Rec. number	What we found	What the organisation say they have done	What we need to see
	<ul style="list-style-type: none"> <li>this matter should have been escalated internally to the Principal Solicitor.</li> </ul>		By: 6 September 2021
	Under complaint (a) we found that there were delays in correspondence regarding the execution of the intervention order.	<p>The Council's Legal Services Team said that:</p> <ul style="list-style-type: none"> <li>the Principal Solicitor will take a more prominent role in relation to resolving any future delays, escalating issues to the Senior Legal Manager as appropriate.</li> <li>the Senior Legal Manager will receive updates on this matter every Wednesday and Friday until the matter is resolved.</li> <li>the Senior Legal Manager will provide a summary update to the Council's Head of Legal and Risk by close of business each Friday.</li> </ul>	<p>Evidence that the Principal Solicitor is taking a prominent role in relation to resolving any future delays, escalating issues to the Senior Legal Manager as appropriate.</p> <p>Evidence that the Senior Legal Manager has received updates on this matter every Wednesday and Friday.</p> <p>Evidence that Senior Legal Manager has provided a summary update to the Council's Head of Legal and Risk by close of business each Friday.</p> <p>By: 6 September 2021</p>



## **Feedback for Edinburgh Health and Social Care Partnership**

### *Points to note:*

The Code of practice for anyone authorised under an intervention or guardianship order states it is good practice to draw up a plan to implement the intervention order, specifying when action will start, when it will be completed and the steps to be taken in between. In circumstances of this case it may have been helpful to have a written plan and the HSCP and the Council may want to reflect on this.