

Scottish Parliament Region: North East Scotland

Case 200500110: Grampian NHS Board

Summary of Investigation

Category

Health: Community Healthcare; Orthodontics

Overview

Mr and Mrs C raised a complaint on behalf of their son, Mr A, about the failure of Grampian NHS Board (the Board) to provide him with timely orthodontic treatment. Mr and Mrs C complained that this delay resulted in their having to remortgage their home to pay for private treatment.

Specific complaint and conclusion

The complaint which has been investigated is that the Board failed to provide Mr A with timely orthodontic treatment (*upheld*).

Redress and recommendation(s)

The Ombudsman recommends that the Board:

- (i) pay redress to Mr and Mrs C to the amount of £2,700; and
- (ii) review the current Urgent Waiting List policy to ensure there is sufficient flexibility in its application to respond to the specific needs of individual patients.

The Board have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 11 April 2005 the Ombudsman received a complaint from a couple (referred to in this report as Mr and Mrs C) concerning the failure by Grampian NHS Board (referred to in the report as the Board) to provide their son (referred to in this report as Mr A) with the orthodontic treatment he required. Mr and Mrs C complained that this failure necessitated the treatment being obtained privately at a cost of £2,700.

Investigation

2. Investigation of this complaint involved reviewing the relevant dental records and complaint file, making written and telephone enquiries of Mr and Mrs C and the Board, obtaining the opinions of both a general and a specialist (orthodontic) dental adviser. I have not included every detail in this report but am satisfied that no matter of significance has been omitted. Mr and Mrs C and the Board have had an opportunity to comment on the draft report. A summary of terms used is contained in Annex 1.

Complaint: The Board failed to provide Mr A with timely orthodontic treatment

3. On 6 February 2002 Mr A (then aged 10) was referred by his dentist (Dentist 1) to Aberdeen Royal Infirmary (ARI) Orthodontic Outpatient Clinic for assessment. Dentist 1 noted that Mr A had not yet entered his growth spurt. Mr A was assessed by Orthodontist 1 on 20 May 2002. Orthodontist 1 wrote to Dentist 1 on 22 May 2002 advising that Mr A had a 'severe ... malocclusion' which would require a functional appliance followed by fixed upper and lower appliances to correct it. Orthodontist 1 asked Dentist 1 whether this could be provided by the dental practice, if not she would arrange for the treatment to be carried out in the hospital. Dentist 1 responded on 11 June 2002 asking Orthodontist 1 to arrange Mr A's treatment as it was too complex to be dealt with in the dental practice. Mr A was placed on the waiting list at the ARI at that time.

4. In January 2004 (when Mr A was aged 12 and 2 months) Dentist 1 wrote to Orthodontist 1 advising that Mr A was now having his growth spurt and enquiring as to his place on the waiting list.

5. Mrs C stated that she was advised in January 2004 by a dental receptionist at ARI that they were currently dealing with patients born in 1989 and as Mr A was born in 1991 he had another two years to wait on the list. Dentist 1 had advised that Mr A should commence the dental work by the summer of 2004 as he was in his growth spurt (this being the most beneficial time for the work to be carried out). Mrs C stated that the receptionist suggested that a further appointment with Orthodontist 1 might be useful as she had not seen Mr A for some time. Mrs C was advised that this would need to be arranged privately as Orthodontist 1 had no available appointments at the hospital. Mrs C made this arrangement and stated that Orthodontist 1 agreed that Mr A was now in his growth spurt and that this was the most beneficial time for the treatment. As Orthodontist 1 could not currently carry this work out within the NHS (because of time demands) the family opted to pay £2,700 to have the work carried out privately.

6. Mr and Mrs C raised this matter with the Board in July 2004. The Board responded in August 2004, expressing their sympathy with the situation but advising that the shortage of Orthodontists (and consequent waiting list times) was well recognised but persisted despite the Board's best endeavours to recruit new staff. Mr C raised the matter with his MSP who wrote to the Chief Executive in April 2005. The Board responded in May 2005 reiterating the situation but advising that they had no mechanism to refund the monies spent by Mr and Mrs C for Mr A's private treatment.

7. The orthodontic adviser said that the treatment proposed by Orthodontist 1 was complex in nature and very likely required to be carried out by an orthodontist rather than a dentist. The orthodontic adviser questioned the merits of a waiting list system based on a patient's year of birth rather than assessment of need and urgency in cases like those of Mr A where treatment was so time-dependent. He also said that most Orthodontists who provide this treatment would support starting it significantly earlier than 15 years of age.

8. The dental record for Mr A at ARI contains a handwritten note from January 2004 indicating that Mrs C called but could not be given any timescale for commencement of Mr A's treatment and was to call back in a 'few months time'.

9. In response to my enquiry the Board commented that in May 2002 Mr A was placed on the urgent waiting list, which was specifically used for those patients requiring functional appliances. Due to well known staff shortages this list had a considerable back-log. To ensure treatment was commenced at the appropriate time the list operated to ensure that all treatments were carried out prior to any boy reaching 15 years of age (based on the maximum adolescent growth being between 12 and 15 years). This operates by prioritising patients according to their date of birth. The Board advised that in June 2004 there were a number of boys older than Mr A on the urgent waiting list so Orthodontist 1 was not able to say when Mr A might be treated within the NHS.

10. In response to the draft of this report the Board advised me that Orthodontist 1 suggested to Mr and Mrs C that they might obtain treatment under the NHS at the other local NHS Specialist Practice but they declined to do so and opted for private treatment. The Board provided me with a copy of an unsigned letter dated 27 November 2004 which appears to have been written by Orthodontist 1 to the General Manager for Acute Services at that time. This letter had not been sent to me previously as part of the correspondence relating to the complaint provided by the Board. The letter includes a statement to the effect that Orthodontist 1 specifically informed Mrs C of the availability of another Specialist Practice in the area. Because the letter is unsigned and was not initially made available to me or mentioned in any previous correspondence on the matter, I have attempted to discuss this letter with Orthodontist 1 both independently and with the assistance of the Board but have not been able to do so. I would also note that there have been severe delays in the handling of this complaint caused by a lack of co-operation from Orthodontist 1.

11. In response to the draft report the Board also stated that Dentist 1 was aware of the existence of the other NHS Specialist Practice and could have referred Mr A there had she so wished.

12. Mrs C has denied any knowledge of the NHS Specialist Practice and of being told about it by either Orthodontist 1 or Dentist 1. Mrs C told me that she was not even aware of the other practice in the area until it was mentioned by the Board in response to my draft report. Mrs C told me she asked Dentist 1 about the other practice after receiving a copy of the Board's response and was told by Dentist 1

that, while she was aware of the existence of the Specialist Practice it, was not her practice to refer patients there. Mrs C also noted that she would not have chosen to remortgage the house and pay the money for the treatment if she and her husband had believed there was an alternative NHS provision.

13. The Board stated that the waiting list policy was in line with current practice in orthodontic hospitals and that they used the standards of the *Index of Orthodontic Treatment Need* to prioritise treatment according to need. Finally the Board stated that had Mr A remained on the list he would have started his treatment by September 2005 (at which time he would have been 13 years and 10 months old) and within the growth range for male patients. I note that there was nothing in the complaints response from the Board to Mrs C in August 2004 to contradict or correct her expressed view at the time that it would be a further two years (July 2006) before Mr A was treated or to indicate that the other Specialist Practice were able to provide the treatment earlier.

14. In response to the Board's comments the orthodontic adviser commented that the use of the urgent waiting list to give priority to patients requiring functional appliances is a more reasonable approach. The adviser commented that the adolescent growth spurt between 12 and 15 years is an average value subject to significant individual variation. Dentist 1 had advised in early January 2004 that Mr A had entered his growth spurt but no account was taken of this in placing him on the waiting list. The adviser also noted that functional appliances require a great deal of cooperation and compliance which he felt were more readily available from younger children. He doubted the merits of a policy that potentially allowed treatment for boys to be left until just before the age of 15.

15. Mr C provide me with a copy of the relevant bill for treatment for the private work undertaken by Orthodontist 1. The total bill for treatment is £2,700.

Further background information

16. The Ombudsman has investigated a previous complaint about delay in providing orthodontic services in NHS Grampian (case reference S.106/01-02, report issued 3 February 2004). The events complained of in that case took place in 2001. During the course of that investigation NHS Grampian staff explained that difficulties in providing orthodontic services in the area stemmed from the

unexpected loss of an experienced orthodontist in 1998. They also explained the steps they had taken to try to remedy the situation and why, to date, they had not been successful. The Ombudsman's conclusion in this case was that NHS Grampian was taking reasonable steps to deal with the problem. She was also advised that the condition of the patient on whose behalf the complaint was made was not of a serious nature and that clinically he would not be disadvantaged by a delay in treatment. Consequently, the Ombudsman did not uphold the complaint.

Conclusion

17. I recognise the difficulties being experienced by the Board in recruiting dental staff. However, it is a matter of concern that, at the time of the events complained of in this case, such difficulties had been experienced for five years without any solution having been found. This clearly causes difficulties for staff and patients. I also acknowledge that the NHS will always have to prioritise resources against diagnosed need. The context of this complaint is that the Board have decided that they will provide an orthodontic service. The issue I have to consider is whether their processes for prioritising resources and treatment for individual patients were reasonable in all the circumstances, with specific reference to the implications in Mr A's case.

18. It is agreed that Mr A required treatment and that failure to receive such treatment would be to his clinical disadvantage. It is also agreed that the treatment required to be performed within a reasonable period of his growth spurt commencing. Mr and Mrs C were advised in December 2003 by Dentist 1 that Mr A had entered his growth spurt and that the most beneficial time for treatment would be in summer 2004. I have seen no evidence to contradict these views. However, although the Board acknowledged that treatment required to be carried out, they could give no timescale for when Mr A would be treated. Further, the urgent waiting list that Mr A was put on had a considerable back-log. There is no corroborated evidence that Mr and Mrs C were made aware that they could access NHS treatment elsewhere and particularly about the existence of the other Specialist Practice, or that that practice would have been able to provide the treatment within the appropriate timescale. Indeed, the evidence rather points to the conclusion that they were not made aware of the existence of the Specialist Practice. In these circumstances, I consider that it was reasonable for Mr and Mrs C to seek treatment for their son privately.

19. The waiting list system operated by ARI Orthodontic Hospital is ostensibly needs based in that urgent cases are identified. However, treatment for patients on the urgent waiting list whose treatment is time dependent is simply designed to try to ensure that all cases are treated by the age of 15. This reflects the clinical view that the average growth spurt is between the ages of 12 and 15. I accept that difficult decisions have to be made when there are scarce resources and waiting lists, but the system of prioritisation adopted by the Board does not contain the degree of flexibility necessary to respond to individual rather than average need. Furthermore, I have been advised that most orthodontists would support starting the treatment Mr A needed significantly earlier than 15 years.

20. In prioritising their resources for delivering their orthodontic service I would expect the Board to take into account that their process should be consistent with accepted best practice and advice given by their own practitioners to patients in relation to their specific clinical need. This consistency should apply throughout the whole allocation process not just at first assessment. In other words, while the Board do take account of need at the initial stage of identifying urgent cases, this complaint has highlighted that, for all cases on the urgent waiting list, prioritisation is not by need but by age. Thus, I consider that the current practice is inconsistent.

21. I have taken all the above factors into account in reaching my conclusion that there was a failure by the Board to provide an adequate orthodontic service to Mr A in relation to the severity of his condition and the most appropriate time for carrying out the treatment required. Further I consider that this failure caused hardship and injustice in that it meant he could not receive the treatment he required through the NHS; and that Mr A would have been clinically disadvantaged had his parents not obtained treatment for him privately when they did so. I, therefore, uphold the complaint.

Recommendations

22. In light of this conclusion the Ombudsman recommends that the Board pay redress to Mr and Mrs C to the amount of £2,700.

23. The Ombudsman also recommends that the Board review the current Urgent Waiting List policy to ensure there is sufficient flexibility in its application to respond to the specific needs of individual patients.

24. The Board have accepted the Recommendations. SPSO will follow-up to ensure these have been acted on as necessary.

31 October 2006

Explanation of abbreviations used

Mr and Mrs C	The complainants (Mr A's parents)
Mr A	Mr and Mrs C's son
The Board	Grampian NHS Board
Dentist 1	Mr A's dentist
Orthodontist 1	The Consultant Orthodontist who assessed Mr A at Aberdeen Royal Infirmary and who eventually carried out the orthodontic treatment on a private basis.
ARI	Aberdeen Royal Infirmary