

Case 200701692: A Dentist, Fife NHS Board

Summary of Investigation

Category

Health: Policy/administration

Overview

The complainant (Mrs C) said that a neck injury prevented her from being able to lie in the conventional, fully recumbent, position in a dentist's chair. Her dentist (the Dentist) refused to treat her, as a back problem prevented him from working on patients that were not in the conventional position. Mrs C had to find another dentist that would treat her in a more comfortable position. Mrs C complained about the dental practice (the Practice)'s handling of her situation and the attitude of the Dentist and other staff at the Practice.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Dentist unfairly refused to treat Mrs C (*not upheld*);
- (a) the Dentist failed to provide appropriate information to help Mrs C access the dental treatment that she required (*no finding*); and
- (b) the Practice's complaint handling was poor (*not upheld*).

Redress and recommendations

The Ombudsman draws the Dentist's attention to the General Dental Council Standards for Dental Professionals guidance, which suggests producing a public version of the Practice's complaints procedure that can be prominently displayed and made easily available to patients.

Main Investigation Report

Introduction

1. The complainant (Mrs C) had a whiplash injury that meant that she found it extremely difficult to lie fully recumbent in a dentist's chair. She complained that, upon attending her dental practice (the Practice), her dentist (the Dentist) refused to treat her in any position other than fully recumbent, due to his own back problem. The other partners within the Practice also refused to treat Mrs C and she was forced to find another dental practice that would treat her in a more comfortable position. Mrs C was unhappy with the Practice's lack of flexibility when treating patients with special needs and with the attitude of staff at the Practice when dealing with her enquiries. She felt that she had been dismissed by the Practice and left to make alternative arrangements without assistance.

1. Mrs C complained to the Dentist about the way the Practice had dealt with her. Dissatisfied with their response, she brought her complaint to this office in September 2007.

2. The complaints from Mrs C which I have investigated are that:

- (c) the Dentist unfairly refused to treat Mrs C;
- (d) the Dentist failed to provide appropriate information to help Mrs C access the dental treatment that she required; and
- (e) the Practice's complaint handling was poor.

Investigation

3. In order to investigate this complaint, I have reviewed all of the correspondence between the Dentist, the Practice and Mrs C. I have also sought professional advice from the Ombudsman's dentistry adviser (the Adviser) and the General Dental Council (the GDC) and interviewed Mrs C by telephone, and obtained written statements from the Dentist. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Dentist were given an opportunity to comment on a draft of this report.

(a) The Dentist unfairly refused to treat Mrs C

4. In her complaint to the Ombudsman, Mrs C acknowledged that her dental treatment had been difficult, both for her and the Dentist. A whiplash injury meant that she could not lie in a fully recumbent position in the dentist's chair.

This was the Dentist's preferred position for working on patients, as he had a back problem which made it increasingly difficult for him to work on patients in an upright or semi-raised position.

5. During an examination on 18 January 2007, the Dentist commented to Mrs C that access to the back of her mouth was very difficult due to the raised position she required to be in, and that, should a posterior crown be required in the future, then he may find this impossible to do. In her letter to the Ombudsman, Mrs C commented that the Dentist had previously fitted a crown on one of her, similarly positioned, teeth when she was in a raised position.

6. On 13 September 2007, Mrs C telephoned the Practice to reschedule her next appointment. She told me that she was advised that her appointment was to be cancelled, as the Dentist and other partners at the Practice had decided to change the Practice to an independent, private practice. Accordingly, Mrs C was to be sent confirmation of the change to the Practice's status along with registration documents, should she wish to sign up as a private patient. As changes were taking place, Mrs C felt that it may have been an appropriate opportunity to change to a different dentist within the Practice. She said that the Practice's receptionist advised her that this would not be possible, as they could not make an exception for one patient by allowing them to swap between dentists. Mrs C was disappointed with this view, as she felt she had a valid reason for requesting the transfer in that it would be beneficial both to her and the Dentist. She was advised to call back and ask to speak to the Practice Manager. Upon calling back, she was advised by the Practice Manager that all of the other dentists at the Practice had been asked whether they would accept a patient that required to be treated in a raised position. All three remaining dentists declined to take Mrs C on as a patient.

7. Mrs C was unhappy at what she saw as a lack of flexibility within the Practice to treat patients with special needs. She was required to find a different dental practice locally that would be willing to treat her in a raised position. She said that no assistance was available to do this. Fortunately, Mrs C found a new dentist relatively quickly.

8. I asked the Dentist for his comments with regard to the decision that he and his colleagues took, not to treat Mrs C. The Dentist stressed that he at no time refused to treat Mrs C, but confirmed that he had advised her that future work on her posterior teeth may be impossible should he be required to work

with her in her preferred, raised position. The Dentist further explained that his partner at the Practice and two associates declined to take Mrs C as a patient, as their patient lists were already full. I note, however, that in a letter to Mrs C dated 19 September 2007, the Dentist stated 'Unfortunately, my colleagues also wish to work with the patient fully recumbent'.

9. When investigating this complaint I wanted to establish whether it was reasonable for the Dentist to take the position that Mrs C should be denied treatment in her preferred position on the basis that the Dentist was uncomfortable working that way. The Adviser explained to me that dentists are trained to work on patients in the fully recumbent position. He said that it is extremely difficult, if not impossible, to work on certain teeth when the patient is in a raised position due to the angle that the dentist would have to work at. Research that the Adviser has carried out suggests that back problems are common among dentists and it was his opinion that it is reasonable for dentists to refuse to work in a position that could be detrimental to their own well-being. He stressed that each patient should be assessed individually with a view to working in a compromise position if possible, however, dentists should not be expected to put their own health at risk to work on a patient.

10. The GDC issue guidance to dentists in their Standards for Dental Professionals booklet. Section 1.1 of the guidance states 'Put patients' interests before your own or those of any colleague, organisation or business'. However, section 1.3 goes on to say 'Work within your knowledge, professional competence and physical abilities. Refer patients for a second opinion and for further advice when it is necessary'. Section 2.3 of the guidance states 'Do not discriminate against patients or groups of patients because of their ... special needs or disability ... or any other relevant consideration'.

11. No formal guidance exists for dentists as to how to approach the treatment of patients that are unable to lie flat in the dentist's chair. The Adviser explained that it would be impractical to have a set of rules for such situations, as each patient's physical impairment is likely to be slightly different. The dentist would, therefore, assess the extent of the individual's ability to undergo treatment, rather than making a decision not to treat based on a general description of their disability.

12. I asked the GDC for their comments in response to Mrs C's specific case. They considered the Dentist to have recognised the limitations of his own

capabilities and praised him for not putting either Mrs C's or his own health at risk by treating beyond his own physical impairment. The GDC explained that dentists can cause injury to patients, as well as jeopardising their own health, by working in positions that are uncomfortable or unnatural to them. They would, therefore, encourage dentists to refer the patient to another dentist that is able to treat them safely.

(a) Conclusion

13. I acknowledge that, historically, the Dentist treated Mrs C in a raised position and that he did not refuse to treat her on any specific occasion. Rather, he forewarned Mrs C that she may be refused treatment in the future, as her neck injury meant that performing certain procedures may be impossible due to the impact that this could have on his own health.

14. Mrs C said that the other dentists within the Practice refused to take her on as a patient, due to their own reluctance to work on patients in a non-recumbent position. The Dentist said that Mrs C could not be taken on by his colleagues, as their patient lists were full, however, in his letter to Mrs C dated 19 September 2007, indicated that they wished to work with patients in the fully recumbent position. Although I am unable to confirm, beyond any doubt, the basis on which the dentists declined to accept Mrs C as a patient, I am satisfied that they were under no obligation to do so, and that it would have been reasonable for them to refuse to work in a position that they felt would be detrimental to their own health.

15. Both the GDC and the Adviser agreed that the Dentist's decision not to treat Mrs C in a position that was unnatural to him was reasonable and I accept that doing so could have caused injury to Mrs C or the Dentist himself. The GDC Standards for Dental Professionals encourage dentists to treat patients wherever possible and not to discriminate against individuals with physical impairments. This sentiment was reinforced by the Adviser, who stressed that dentists should assess a patient's physical limitations with a view to treating in a compromise position if possible. I am satisfied that, by treating Mrs C in a raised position when carrying out work in areas of her mouth that he could access comfortably, the Dentist respected the formal guidance on putting patients' interests before his own. With this in mind, I do not uphold this complaint.

(a) *Recommendation*

16. The Ombudsman has no recommendations to make.

(b) The Dentist failed to provide appropriate information to help Mrs C access the dental treatment that she required

17. As I have already mentioned in paragraph 8, Mrs C was unhappy with the Dentist's decision not to perform certain procedures unless she was in the fully recumbent position, which she found painful and uncomfortable. She felt that the Practice as a whole demonstrated a lack of flexibility, as none of the other dentists would take her on as a patient. Mrs C said that she was left with two choices: to stay on as the Dentist's patient and suffer great pain whilst being treated, or to find another dentist locally who would treat her in a raised position. She chose the latter, but complained that no assistance was offered by the Practice to help her find a dentist that would be willing to work on her. Whilst Mrs C was able to find another NHS dentist relatively quickly, she felt that the Dentist should have assisted by referring her to another practice, or identifying resources that she could use to find a suitable dentist.

18. I asked the GDC and the Adviser what action they felt the Dentist should have taken following his decision not to treat Mrs C. Both agreed that, whilst the decision not to provide treatment was reasonable, the Dentist should have had some form of referral process in place to ensure that departing patients were assisted in finding alternative practices. Given the reasons for Mrs C's departure, and the specialist care that she required, the Adviser considered it appropriate that the local Community Health Practice's details should have been provided. The GDC took a broader view and suggested that, as Mrs C was an NHS patient, the appropriate Health Board's telephone number should have been provided. They said that it would have been very good customer service for the Dentist to also provide the Community Health Practice's contact details, but noted that there was no obligation for him to do this.

19. I asked the Dentist what assistance, if any, was provided to Mrs C following her decision to leave the Practice. He told me that when Mrs C contacted the Practice and was told that none of the other dentists would accept her as a patient, she was then given the telephone number of the Health Board so that she could seek their help with accessing a dentist outwith the Practice. Mrs C was adamant that she was provided with no such information. I asked the Dentist to confirm whether he had any record of this advice being given and to provide me with details as to how he believed the information was provided.

The Dentist told me that the Practice did not keep a written record of the Health Board's telephone number being given to Mrs C. He explained that, as the Practice was going private, all reception staff had been trained how to react to patients' requests for further information about the changes or about how to find another NHS dentist. Letters had been sent to all of the Dentist's patients, explaining the changes and reception staff were, therefore, very busy fielding calls and handing out the Health Board's helpline number. The helpline number was provided in a number of formats during this period; verbally with the patient present, by telephone and in writing on a business slip. The Dentist explained that the Practice's receptionist remembered providing Mrs C with the number, but could not recall how it was provided.

20. The Dentist told me that, at the time of responding to my enquiries in March 2008, the next tranche of letters was due to be sent to patients, explaining the changes in the Practice. He said that the Health Board's helpline number would be included on those letters.

(b) Conclusion

21. I am satisfied that the Dentist was generally aware of the need to provide the Health Board's contact details, as a minimum, when patients decided to leave the Practice. I also accept that, at the time of Mrs C's departure from the Practice, a number of patients would have been reviewing their registration at the Practice and that it would be normal procedure for the Health Board's number to be made available. I acknowledge, however, Mrs C's assertion that no information was provided to her.

22. There is insufficient evidence available for me to confirm what information, if any, was provided to Mrs C at the time of her decision to leave the Practice. I am, therefore, unable to reach any firm conclusions on this aspect of Mrs C's complaint.

(b) Recommendation

23. The Ombudsman has no recommendation to make.

(c) The Practice's complaint handling was poor

24. Mrs C was dissatisfied with the Practice's reluctance to treat her in a raised position. She said that, upon telephoning to enquire as to whether she could transfer to a different dentist within the Practice, the Practice's receptionist told her that this would not be possible, as 'if it was done for me,

other people would want it too'. Mrs C was not happy with this response, as she felt that she had a valid reason for requesting a change of dentists. She was told that she could raise the matter with the Practice Manager and was asked to call back when the Practice Manager was available to talk to her.

25. Mrs C telephoned the Practice and spoke to the Practice Manager who told her that, whilst awaiting her call, she had asked the other dentists within the Practice whether they would be prepared to take on a patient that would require treatment in a position other than the conventional, fully recumbent position. Mrs C was told that none of the other dentists would accept her as a patient. She did not find this to be a satisfactory conclusion, as she had been treated in a raised position by dentists at the Practice previously. She noted that the dentist that she had been registered with prior to becoming the Dentist's patient had had no problem with treating her in a raised position. Mrs C reportedly asked the Practice Manager to confirm that her only options were to continue to be treated by the Dentist in a position that would cause her great pain, or to leave the Practice and find another dentist. She told me that the Practice Manager confirmed that this was the case.

26. The Practice Manager conceded that she had only quickly asked the dentists whether they would consider accepting Mrs C as a patient. Mrs C asked whether the matter could be raised at a practice meeting. The Practice Manager said that she would be able to do this if Mrs C submitted her concerns in writing. Mrs C wrote a formal complaint to the Practice Manager on 13 September 2007.

27. The Dentist replied to Mrs C's letter on 19 September 2007. His letter was brief but explained the reasons for his reluctance to perform certain procedures with the patient in a raised position. He also sympathised with Mrs C's neck problem, explaining that his own increasingly bad back restricted the tasks that he could perform. He confirmed that his colleagues also wished to work with their patients in the fully recumbent position and indicated that Mrs C would most likely have to find a private practice elsewhere.

28. Mrs C said that, after receiving the Dentist's letter, she visited the Practice and asked for a copy of their formal complaints procedure. She was reportedly advised to put her concerns in writing to the Practice Manager. Having explained that she had already done so, she was told that there was no provision within the complaints procedure for her to escalate her complaint and

that it would be up to the Practice Manager to decide whether or not the matter was taken any further. The Practice Manager was at that time on annual leave.

29. The Dentist told me that, upon learning that none of the Practice's dentists would accept her as a patient, Mrs C reacted in an aggressive manner and was abrupt with reception staff. He explained that this may have influenced the tone of his written response to her complaint. He further explained that Mrs C was initially sent information about the Practice's decision to go private and how that would be handled. She raised her complaint verbally with the receptionist and then the Practice Manager. Following this, she submitted her concerns in writing so that they could be discussed at a practice meeting. The Dentist also noted that their normal procedure is for unresolved complaints to be escalated to the Health Board, rather than the Ombudsman.

30. The GDC publish guidelines for dentists in its Standards for Dental Professionals booklet. The booklet offers the following guidance in relation to complaints:

'Give patients who make a complaint about the care or treatment they have received a helpful response at the appropriate time. Respect the patient's right to complain. Make sure there is an effective complaints procedure where you work and follow it at all times. Co-operate with any formal inquiry into the treatment of a patient.'

31. I obtained a copy of the Practice's complaints procedure. This document is evidently intended for internal guidance and details the procedures that staff should follow when dealing with a patient's complaint. The guidance states that staff members should initially discuss the complaint in person with the patient and complete a complaints form, which the patient should sign. The complaint should be acknowledged within three days and responded to within two weeks. With the relevant dentist's involvement where required, the staff member should then seek to resolve the complaint to the patient's satisfaction if it is possible to do so. The patient should then be advised of the outcome. If the patient remains dissatisfied, then they should be provided with details as to how to escalate the matter with the Health Board. The complaints procedure states that all patient complaints should be discussed at practice meetings as a matter of routine.

(c) Conclusion

32. Mrs C does not appear to have been given details of the Practice's complaints procedure up front. This led to her finding out what the following stage would be after each enquiry was not answered to her satisfaction. She told me that she felt that there was no formal complaints procedure and was left with doubts as to whether her complaint was ever discussed at the practice meeting.

33. Mrs C's complaint does not appear to have followed the formal complaints procedure step-by-step, however, I consider there to be a degree of flexibility within the staff guidelines and I am satisfied that the progression of Mrs C's complaint was appropriate given her specific circumstances. She was initially dealt with informally, then referred to the Practice Manager, asked to submit a formal complaint and then had her concerns responded to by the Dentist, one of the Practice's partners. Although I have been unable to establish whether Mrs C's case was heard at a practice meeting before the Practice's final response was sent, I am satisfied that the appropriate members of staff were consulted before a decision was made and acknowledge that there is provision within the Practice's operational structure to allow for the discussion of complex or controversial issues.

34. Although Mrs C may not have been made aware of a structured complaints procedure, I consider her complaint to have been escalated appropriately through the Practice and have seen no evidence to suggest that her concerns were not considered by the relevant staff. Accordingly, I do not uphold this complaint.

(c) Recommendation

35. Although I do not uphold this complaint, I consider it important that complainants are made aware of the complaints process and how they can expect their complaint to be handled. I acknowledge that, since the time of Mrs C's complaint, the Dentist has withdrawn all NHS services from the Practice. He, therefore, no longer represents a body that the Ombudsman can make recommendations to.

36. The Ombudsman, however, draws the Dentist's attention to the GDC Standards for Dental Professionals guidance, which suggests producing a public version of the Practice's complaints procedure that can be prominently displayed and made easily available to patients.

Explanation of abbreviations used

Mrs C	The complainant
The Practice	Mrs C's dental practice
The Dentist	Mrs C's dentist
The Adviser	A professional dentistry adviser
The GDC	The General Dental Council

List of legislation and policies considered

General Dental Council Standards Guidance:
Standards for Dental Professionals