Scottish Parliament Region: Lothian

Case 200700789: Lothian NHS Board

Summary of Investigation

Category

Health: Consent in medical decision-making in respect of an adult with mental incapacity

Overview

The complainant (Mrs C)'s 19-year-old son had a dental operation at St John's Hospital (the Hospital) in the area of Lothian NHS Board (the Board). His learning disability meant he did not have the mental capacity to make his own decisions about treatment or consent, nor to understand much of what was happening to him at the Hospital. Mrs C complained that she did not have the chance to withhold her consent to all the work being done at one session because she considered that the large volume of work should have been spread across more than one surgical session. She said that she had not been told before the operation of the possibility of so much work. She added that the amount of work done at the one session had caused her son such distress that, amongst other things, he had been chewing his lip, which she said had become an open, infected, sore.

Specific complaint and conclusion

The complaint which has been investigated is that informed consent to the operation was not properly sought (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Board:

(i) apologise to Mrs C for the failure to seek informed consent;

(ii) satisfy themselves that relevant administrators and healthcare professionals at the Board have an appropriate knowledge and understanding of the Adults with Incapacity (Scotland) Act 2000, its Code of Practice and other relevant guidance;

(iii) share lessons learnt from this case across their hospitals and disciplines;

(iv) use the events of this case as part of their induction and other training programmes about consent and about communication with carers etc who

have a legal say in decisions about the medical treatment of an adult with incapacity;

(v) ensure that the Board's Consent Policy, in relation to obtaining consent in writing, is followed;

(vi) advise clinicians across the Board's hospitals that recording only key points of consent discussions will not be sufficient in some cases; and

(vii) consider revising their consent form in respect of adults with incapacity.

Main Investigation Report

Introduction

1. The complainant (Mrs C)'s 19-year-old son (Mr A) had a dental operation at St John's Hospital (the Hospital) in the area of Lothian NHS Board (the Board). His learning disability meant he did not have the mental capacity to make his own decisions about treatment or consent, nor to understand much of what was happening to him at the Hospital. Mrs C complained that she did not have the chance to withhold her consent to all the work being done at one session because she considered that the large volume of work should have been spread across more than one surgical session. She said that she had not been told before the operation of the possibility of so much work. She added that the amount of work done at the one session had caused her son such distress that, amongst other things, he had been chewing his lip, which had become what she described as 'an open, infected, sore'. A reminder of abbreviations and relevant legislation etc is in Annex 1.

2. The complaint from Mrs C which I have investigated is that informed consent to the operation was not properly sought.

Investigation

3. I was assisted in the investigation by an adviser (the Adviser), who is a dentist with experience of treating adults with mental incapacity under general anaesthetic. Her role was to explain to me, and provide an unbiased comment on, aspects of the complaint. We examined the papers provided by Mrs C (which included her complaint correspondence with the Board and her opinions) and information provided by the Board (which included Mr A's dental records from the Hospital). Of particular relevance in this case is the Adults with Incapacity (Scotland) Act 2000 (the Act), and this will be covered in some detail in the report. I considered the Act and a Scottish Government Code of Practice (the Code) which relates to part of the Act and the Board's policy document, 'Obtaining informed consent policy/procedure' (which I shall refer to as the Board's Consent Policy). And I considered information (which I shall refer to as the Regulatory Guidance) produced by the General Dental Council. I should add that the complaint has been discussed (without enabling it to be identified) with the Mental Welfare Commission for Scotland (see paragraph 8), who confirmed my understanding of the Act, the Code and the Regulatory Guidance. In line with the practice of the Ombudsman's office, the standard by which the events were judged was whether they were reasonable. By that, I mean

whether the decisions and actions taken were within a range of what would have been considered to be acceptable practice at the time in question. The purpose of the investigation was to use the information from Mrs C and the Board to try to establish the relevant facts, ie what happened, and then to consider whether what happened fell within this range of reasonable practice.

4. I have not included in this report every detail investigated. In particular, I have not recorded all the details which are known to both Mrs C and the Board or are not in dispute or do not have any particular relevance to my conclusions. I am satisfied that no relevant matter of significance has been overlooked in the investigation. Mrs C and the Board were given an opportunity to comment on a draft of this report.

Legislation, guidance, procedures

5. The legal position is set out in the Act. Put simply, Scots law does not entitle someone (such as a relative) to make decisions about medical treatment on behalf of an adult who has a mental incapacity, except under the terms of the Act. One way for such a person to have a say in the medical decision-making is for them to go through a legal process to become what, for simplicity's sake, I shall refer to as a Guardian (or Guardians, as the case may be). Mrs C is such a Guardian in respect of Mr A. This, therefore, put her in the same position regarding issues of consent for her son's treatment as he would have been in had he been able to make his own decisions.

6. Relevant parts of the Act include sections 47 and 50. Briefly, section 47 requires someone, such as the family doctor, to complete a certificate of incapacity, confirming that a particular adult has a mental incapacity. The certificate can also give a named body (such as a hospital) the authority to make medical decisions, give medical treatment etc, in relation to that adult. In this case, the family doctor completed such a certificate, authorising the Board's dental service to provide 'all dental treatment as considered necessary'.

7. Because Mrs C is a Guardian, section 50 also applies. Briefly, this says that any authority which is given in the certificate of incapacity does not apply in circumstances where there is a Guardian and where it would be reasonable and practicable to seek the Guardian's consent to the proposed medical treatment. In other words, where a Guardian is in place, a certificate of incapacity is still required to confirm that the adult in question has a mental incapacity - but the

certificate does not additionally give any authority for someone else to provide treatment because, instead, consent has to be sought from the Guardian.

8. Section 50 also says that, where the Guardian has been consulted and there is a disagreement about the proposed medical treatment, the clinician who wishes to carry out the proposed treatment should ask the Mental Welfare Commission for Scotland to nominate another medical practitioner. That practitioner should have 'regard to all the circumstances', consult the Guardian and then give an opinion about whether the proposed treatment should be given. (The Mental Welfare Commission for Scotland are an independent organisation, working to safeguard the rights and welfare of people with a mental illness, learning disability or other mental disorder.)

9. The Code (see paragraph 3) relates to the part of the Act dealing with medical treatment. The Code states that its terms should be followed unless there are good reasons for not doing so. Amongst other things, it says:

> 'The Act requires that even where a [Guardian] has been appointed, a certificate [of incapacity] should be completed. There are requirements under … the Act to involve [Guardians] in decision making about medical treatment … [The Act] also provides a dispute resolution process where [Guardians] and medical practitioners do not agree about a treatment decision … Section 50 envisages that a [Guardian] should be given the opportunity to consent to the proposed medical treatment …'

10. I have read the Board's Consent Policy (see paragraph 3). Amongst other things, it addresses the question of whether consent should be written, verbal or implied. It states that express (ie definitely stated, rather than implied) consent - in writing - 'must' be obtained for (amongst other things) any procedure to be carried out under general anaesthetic.

11. I have also considered the Regulatory Guidance (see paragraph 3). This is advice in the booklet, 'Principles of patient consent', by the General Dental Council, who are the dental regulatory body. The booklet is aimed at dentists and says that:

> 'It is a general legal and ethical principle that you must get valid consent before starting treatment or physical investigation.'

It explains that, for consent to be valid, the patient must have received enough information to make the decision. In other words, the consent must be 'informed'. It also says:

> 'You should give patients the information they want and need, in a way they can use, so that they are able to make informed decisions about their care … Find out what your patients want to know, as well as telling them what you think they need to know. Examples of information which patients may want to know include:
>
> - why you think a proposed treatment is necessary;
> - the risks and benefits of the proposed treatment;
> - what might happen if the treatment is not carried out;
> - other forms of treatment, their risks and benefits, and whether or not you consider the treatment is appropriate.'

Clearly, these things could not have been discussed with Mr A. However, it is clear that these were relevant principles for the clinicians to follow in seeking Mrs C's consent.

Complaint: Informed consent to the operation was not properly sought

12. I turn now to the events in question. Briefly, Mr A's mental capacity meant that getting him to sit still for dental examination, x-rays or treatment was not a realistic option. Therefore, in early 2007, when he developed facial pain and swelling, and a partly-successful x-ray identified the need to extract tooth roots, it was clear that a general anaesthetic would be needed. This would be done at the Hospital, which deals with patients with a variety of physical and mental disabilities. The operation, under general anaesthetic, would enable the roots to be removed, a particular tooth to be taken out at Mrs C's request and a proper examination of Mr A's mouth to be done. It was recognised by all concerned, including Mrs C, that the examination under anaesthetic would reveal the need for additional work.

13. A discussion took place before the operation between Mrs C and the clinicians (the Clinicians) who would be present at the operation (and whom I shall also refer to as the Surgeon, the Anaesthetist and the Community Dentist). I shall refer to the discussion as the Operation Discussion. Under the Board's Consent Policy (see paragraph 3), the Surgeon should have noted the key points of the Operation Discussion in Mr A's medical records; however, she did not make any note at all. The Board acknowledged to me that this had been a

failing, which they very much regretted, adding that they had reminded all their dentists and dental care professionals to note all contacts with patients, carers etc. I shall return to the Operation Discussion and the record-keeping later.

14. The operation was done in May 2007. As well as the root extractions, nine teeth were taken out (eight that had been identified by the Surgeon plus one which Mrs C asked to be removed to make it easier for her to clean Mr A's teeth) and two teeth filled. Mrs C expressed great anger in subsequent letters that so much had been done at one time. For example, she said that her son's distress had caused him to chew his lip, which she said became an open, infected, sore and which he was reluctant to let her clean and that his pain and distress had been such that she did not know if she would be able to get him to trust a dentist again. She referred to minor hospital - not dental - treatment about one and a half years later, when he clutched his face, saying, 'Dentist – sore', which she said indicated how much his experiences had stayed in his mind. She considered that such a large volume of work should have been spread across more than one operation to lessen the impact on her son.

15. In their responses to her complaint, the Board explained in detail to Mrs C the medical, and other, reasons for its having been better to do the work at one sitting. I need not repeat these here but should say that they included the medical risks to a patient of a general anaesthetic. The Adviser and I sympathised with Mr A's pain and distress and with Mrs C's difficulties in dealing with these. However, general anaesthetics carry a very real risk, and the Adviser firmly agreed with the Hospital's approach, adding that further general anaesthetics should always be avoided if possible. In other words, although I acknowledge that Mrs C may disagree, I am satisfied that the Clinicians' decision to carry out all the treatment under one general anaesthetic fell well within the range of reasonable, acceptable, practice explained at paragraph 3.

16. I turn now to the complaint that informed consent to the operation was not properly sought.

17. I shall not repeat all the very conflicting views about the Operation Discussion by Mrs C and the Board, who are already familiar with them. But the Board's position can be summarised by the following quotations from two of their complaint responses to Mrs C:

'[The Surgeon] explained that the actual treatment needs would be dependent upon the outcome of the more detailed dental examination and the taking of further x-rays when [Mr A] was anaesthetised. She also indicated that all necessary dental treatment would be undertaken and that teeth would be restored wherever possible and extractions only carried out when necessary. At no stage did you appear to be uncertain or confused about the treatment nor did you give any indication that you did not wish the treatment to proceed. [The Anaesthetist and the Community Dentist] have confirmed that this is their recollection of the discussion;

[The Surgeon] is quite clear that in her discussion with you she said that she would carry out a full examination of [Mr A's] mouth and take additional [x-rays]. She specifically said that she would then restore and extract teeth as was judged necessary, dependent on the results of the examination and [x-rays]. She told you that she would not know exactly how many fillings and extractions would be required …'

18. I also want to quote from two statements which were written (some days after the operation) by the Anaesthetist and the Community Dentist because of Mrs C's complaint:

'[The Surgeon] explained, as she always does, that she would examine the teeth … and she would then make a decision as to which teeth should be removed and which teeth could be saved;

[The Surgeon] explained that once [Mr A] was asleep we would have a thorough examination, take further Xray pictures inside the mouth to show greater detail, clean [Mr A's] teeth and carry out any treatment necessary. The reason that we do this is so as to make the patient dentally fit such that further general anaesthetic in the near future is avoided. Mum and sister appeared to understand this.'

19. With regard to Mrs C's position, in letters to the Board, she said that her professional job required her to be able to listen carefully and that she did so in this case. She said the Surgeon did not comply with the Act and did not tell her what her proposed actions were going to be. She said the Surgeon did say she would carry out a full examination, take additional x-rays and remove the roots in question but absolutely did not say that teeth would be filled or extracted as she found clinically necessary, all on that day. Mrs C also said that her clear understanding, as her son was being taken to theatre, was that the roots were

being removed and that she would be given the results of the examination and x-rays. She referred to the Board's statement that she had not disagreed with the plan of action, saying that there was no plan of action with which she could have disagreed. She felt it was incredible for the Board to say a full discussion had taken place and that it was just incorrect to say that there had been a full discussion. Mrs C added that the Surgeon did not state that she intended to carry out all necessary treatment, including fillings and extractions, on that day. In short, Mrs C felt she had not been given the opportunity to withhold her consent to her son's having a large amount of treatment at one session.

20. As Mrs C is her son's Guardian, section 50 of the Act applied (see paragraph 7). In other words, the Clinicians were required to consult Mrs C, seek her consent to the treatment proposals and involve the Mental Welfare Commission for Scotland if that consent was not given. The Board's position, in a letter to me, is that Mrs C was 'fully consulted', both at the Operation Discussion and earlier, and that the Clinicians would not have gone ahead with the operation if they had doubted her consent. The Board referred to the Code, saying that it required account to be taken of the views of the nearest relative, primary carer or any Guardian and that the clinicians had complied with this as Mrs C was fully consulted. The Board said that the Surgeon and the Anaesthetist:

> 'were fully aware of procedure should a [Guardian] object to a proposed treatment therefore they would certainly not have gone on to the anaesthetic if there had been any doubt in their minds about [Mrs C's] consent to the procedure.'

21. The Board also said to me, by letter, that clinicians had always 'sought the views' of people such as Guardians but that, prompted by Mrs C's complaint, they now additionally had in place a consent form, which would 'acknowledge that a full consultation has taken place, and the range of treatment which may be given has been discussed'. They added that 'a [Guardian] is not able to consent for an adult, hence the need for a [certificate of incapacity]'.

22. In a letter to Mrs C, the Board said that all the dentists in the department in question had taken a university training module on adults with incapacity, that the Surgeon was awarded a merit marking for her performance on the module and that the Anaesthetist 'has a substantial clinical commitment both to our special care dentistry lists and to the hospital [intensive care] department and is working within the [adults with incapacity] legislation regularly'.

23. I was told that the Surgeon had not provided a written statement of her own because her account had been reflected in the Board's letters throughout the complaint process. However, in early 2009, she gave me a detailed, written, statement, which included:

> 'I reminded [Mrs C … that] it was not possible to describe the details of the treatment we would undertake … I explained that treatment may involve fillings and extractions and, as is my normal practice in such situations, described the reasons why teeth may be extracted rather than filled (poor prognosis over next 2 years … etc). [Mrs C … was] interactive … and I felt [she] understood me entirely … [she] appeared happy with all the above conversations and statements … Again, as is our normal practice, [Mrs C … was] actively asked if [she] had any questions, queries or concerns about the proposed [general anaesthetic] or the dental treatment. [She] said [she] did not … At that time it was not our routine practice to make written notes regarding the pre operative agreement since it was an affirmation of discussions that had taken place previously at dental assessment. If I had felt that [Mrs C], either as [Mr A's] mother or welfare guardian, had been unclear about my treatment intentions or felt any disquiet about them, I would have recorded this and attempted to clarify and reassure.
>
> At the time, [the Board] had no clearly defined policy regarding the signing of consent forms by welfare guardians. Since the standard consent form [used the word 'guardian' in a sense which could have been different from the sense in the Act because the form was produced before the Act came into existence], I did not think it appropriate to ask [Mrs C] to sign such a form, nor did [Mrs C] bring up the subject of a consent form.
>
> It is my normal practice to have a full and frank discussion regarding my proposed philosophy of dental care and to ask for the agreement of any carer, parent, welfare guardian or … who accompany my patients. If any such patient representative voiced disquiet about my intentions to treat all dental disease as clinically indicated and I was unable to adequately address their concerns, both myself and my anaesthetic colleagues would cancel surgery until such times as agreement could be reached.

> Neither [the Anaesthetist, the Community Dentist] nor myself had any sense that [Mrs C] did not agree with our proposed plan to provide comprehensive dental care on that day.'

24. I also discussed the Surgeon's recollections of the Operation Discussion with her by telephone. In relation to the first sub-paragraph of paragraph 23 above, she explained that she always made that statement. She felt it was important always to include these things from her perspective of many years' experience, and because, with patients in Mr A's position, it was not unusual to be unable to know, in advance of a general anaesthetic, all the work that would be needed. When I asked whether Mrs C had asked about any alternatives, the Surgeon could not recall (given that the operation was in May 2007) but did not believe there had been any impression of disagreement. She recalled it as an inter-active discussion, rather than a one-sided statement. As her description (see paragraph 23) of the Operation Discussion as an 'affirmation of discussions' could be seen as meaning that she did not particularly view the Operation Discussion as a consent-seeking occasion, I asked about the previous discussions. She referred to a dentist who had been involved, but she could not comment in detail as she had expected my discussion to focus only on the Operation Discussion. I have since re-read the entire file, including the dental records, and I can see no evidence of earlier consent seeking. When I asked the Surgeon what she would have done if she had considered there to be disagreement, she explained that she would have followed the process, which involved a second opinion. I asked her at what point she had particularly considered that she had obtained Mrs C's consent, to which she explained that this was towards the end of the Operation Discussion, after she and the Anaesthetist had given their various explanations and she had rounded up the conversation – that is, the point where she asked Mrs C whether she had any other questions.

Conclusion

25. As I said at paragraph 3, the Mental Welfare Commission for Scotland have confirmed my understanding of the Act. I have concluded, for the reasons below: that there was inadequate understanding of the Act at the Board; that the Operation Discussion did not adequately address the issue of informed consent; that consent – in writing - should have been sought from Mrs C; and that the failure to make a detailed note of the Operation Discussion was a significant shortcoming.

26. I turn, firstly, to the Board's understanding of the Act. At paragraph 20 I said the Board had told me that the Code had been complied with, in that the Code required account to be taken of the nearest relative etc's views. In other words, the inference is that this was all that was required. The Board made no acknowledgement of the fact that the Code also says (see paragraph 9) that there are requirements under the Act to involve Guardians in decision-making about medical treatment – ie much more than simply taking account of views. Additionally, the Board said to me (see paragraph 21) that a Guardian could not consent for another adult, hence the need for a certificate of incapacity. This is wrong (see paragraphs 5 to 7 and 9, which explain that consent should be sought from, for example, Guardians and that the authorisation element of the certificate of incapacity does not apply where there is a Guardian). The Board's statement that a Guardian is not able to consent for an adult also contradicts other statements by them, such as their comment (see paragraph 20) that the Clinicians were aware of the consent procedure. I have to conclude that there was inadequate familiarity with the Act and the Code by the Board's administrative staff. Additionally, the dental unit in question deals particularly with patients with special needs, which means that clinicians there are likely to deal often with people who, by law, are intended to have the chance to be involved in medical decision-making, such as Guardians; it is important, therefore, that clinicians, too, are familiar with relevant parts of the Act and the Code. Beyond that, however, there will be healthcare professionals throughout the Board who may be dealing with people such as Guardians. In other words, the implications of any lack of knowledge and understanding of the Act and Code go far beyond Mrs C's case and far beyond dentistry. The Ombudsman wants the Board to satisfy themselves that all relevant administrators and healthcare professionals within the Board have an appropriate knowledge and understanding of the Act, the Code and relevant guidance (such as the Regulatory Guidance in dental cases). This is such a serious point that the Ombudsman will be looking to the Board for a clear demonstration of significant action taken.

27. Turning, secondly, to the Operation Discussion, I have to say that it is not possible for me to know what was or was not said as I have only the Board's and Mrs C's very conflicting accounts of it. However, I have to say that I find the statements by the Board, the Surgeon, the Anaesthetist and the Community Dentist (see paragraphs 17, 18, 20, 23 and 24) to be revealing. I consider that they give a clear impression that the Clinicians had made their decision, that they were simply telling Mrs C about it and that Mrs C's apparent understanding

and her lack of argument were regarded by the Clinicians as an adequate signal to go ahead. I have also re-read the entire file, including the written statement of another dentist (who had discussed the possible work which would be needed, in two telephone conversations with Mrs C), and I have to say that there is no evidence anywhere of a consent discussion along the lines of, for example, the Regulatory Guidance (see paragraph 11). For example, there is no indication that Mrs C was told of any options. There is no indication that the arguments for and against any options were given to her. There is no evidence that she was given information to help her to weigh up her own view – such as telling her that, on the one hand, Mr A was likely to be very distressed after the operation because there was likely to be a significant amount of work done throughout his entire mouth, which would make eating difficult, but that, on the other hand, he could be more distressed by having a second general anaesthetic because he would not understand why he was not allowed to eat for many hours beforehand. I also note the Surgeon's statement (see paragraph 23) that none of the Clinicians had any sense that Mrs C did not agree with their proposed plan. Proper, informed consent is more than an absence of sensing someone's disagreement. In short, there is no evidence of a proper discussion, leading to proper, informed consent, and what evidence there is points to Mrs C as simply being told about the treatment plan and asked if she had any questions about it. Therefore, I must conclude that the consent element of the Operation Discussion did not fall within the range of reasonable, acceptable, practice explained at paragraph 3.

28. Turning, thirdly, to the question of whether consent should have been in writing, I should say that, in the circumstances, the Board should have sought written consent from Mrs C. I acknowledge that written consent is not a requirement of the Act – although I note that the Board's Consent Policy clearly indicates the importance of consent in writing for procedures under general anaesthetic. What makes written consent so important in this case is the fact that no one knew precisely what work, or how much work, would be needed: this could not be known until Mr A's general anaesthetic enabled a proper examination and x-rays of his mouth to be done. The point is that the less certain a patient or carer can be about what treatment will be carried out, the clearer their consent needs to be. I should add that clear, written, consent can also protect clinicians as it can avoid subsequent uncertainty; in this case, it would, arguably, have avoided the need for this investigation. In this case, an appropriate consent declaration: would have clearly stated that any work which was identified through the examination and x-rays would be done during the

same operation; would have clearly indicated the pros and cons of doing everything at one time, rather than spreading the treatment; would have stated that those pros and cons had been explained to Mrs C; would have said that any alternatives had been explained to Mrs C and what these were; and would have listed the procedures which Mrs C knew in advance were going to be done. Such a declaration would have given Mrs C the opportunity to withhold consent, in which case the Mental Welfare Commission for Scotland would have become involved (see paragraph 8). The Surgeon explained (see paragraph 23) that there was no clear policy about consent forms in the case of Guardians. She also said that the consent form pre-dated the Act and, therefore, might have used the word 'guardian' in a different sense to its use in the Act. She did not, therefore, consider it appropriate to use that form. In commenting on a draft of this report, the Board told me that it was not clinicians' fault that they were unsure about what, if any, form to use. I have discussed this within the Ombudsman's office and we are clear that the point here is that it is the consent that is important, not the form, and the lack of a form should not have precluded the Board from getting consent in writing.

29. Turning, fourthly, to the fact that no note was written on the day in question about the Operation Discussion (see paragraph 13), I should say that the Ombudsman takes record-keeping seriously and that this has featured in many of our investigation reports about various health boards. I consider that the failure to record anything about the Operation Discussion was a significant shortcoming – partly because of the particular circumstances of this case. In other words, it was a situation where the actual treatment to be carried out could not be fully known in advance, so it was particularly important to note what was said about that. I note that the Board's Consent Policy (see paragraph 13) would have required only key points to have been noted. I consider that, in the circumstances, a fuller note would have been wise. In other words, I do not feel that it would have been enough, in this case, for the Surgeon to have followed the Board's Consent Policy by only noting key points. The Board told me (see paragraph 13) that they have reminded all their dentists and dental care professionals to note all contacts with patients, carers etc. That is welcome. However, in addition, the Ombudsman wants the Board to advise clinicians that simply noting a contact will not be enough in some cases: the circumstances of a particular case may mean that it would be wise to include more detail – for example, to demonstrate that the points in the Regulatory Guidance (see paragraph 11) have been adequately covered in discussion. Such a note would also be an opportunity for clinicians to put on record that

they are aware of someone's formal status as a Guardian as Guardians are treated differently under the Act to (for example) close relatives who are not, additionally, Guardians. The Ombudsman also wants the Board to extend this message beyond dentistry.

30. In all the circumstances, I uphold the complaint.

Recommendations

31. The Ombudsman recommends that the Board:

(viii) apologise to Mrs C for the failure to seek informed consent;

(ix) satisfy themselves that relevant administrators and healthcare professionals at the Board have an appropriate knowledge and understanding of the Act, the Code and other relevant guidance;

(x) share lessons learnt from this case across their hospitals and disciplines;

(xi) use the events of this case as part of their induction and other training programmes about consent and about communication with carers etc who have a legal say in decisions about the medical treatment of an adult with incapacity;

(xii) ensure that the Board's Consent Policy, in relation to obtaining consent in writing, is followed;

(xiii) advise clinicians across the Board's hospitals that recording only key points of consent discussions will not be sufficient in some cases; and

(xiv) consider revising their consent form in respect of adults with incapacity.

32. The Ombudsman asks that the Board notify him when the recommendations have been implemented.

Annex 1

Explanation of abbreviations used

Mrs C	The complainant
Mr A	Mrs C's son
The Hospital	St John's Hospital
The Board	Lothian NHS Board
The Adviser	A clinical adviser to the Ombudsman
The Act	The Adults with Incapacity (Scotland) Act 2000
The Code	The Scottish Government Code of Practice relating to part of the Act
The Board's Consent Policy	The Board's document, 'Obtaining informed consent policy/procedure'
The Regulatory Guidance	Booklet entitled, 'Principles of patient consent' by the dental regulatory body, the General Dental Council
Guardian/Guardians	A term used in this report to describe people who have gone through a legal process which gives them a certain say in the medical decision-making regarding an adult with incapacity
The Clinicians: the Surgeon, the Anaesthetist and the Community Dentist	The clinicians who were present at the Operation Discussion and the operation
The Operation Discussion	The discussion held before Mr A's operation