

**Case 200901871: Lothian NHS Board**

**Summary of Investigation**

**Category**

Health: Hospital; waiting times; complaints handling

**Overview**

The complainant (Mr C) has raised concerns about the time it has taken to receive an operation following a referral by his GP. He has also complained of Lothian NHS Board (the Board)'s failure to provide a clear explanation for the delay.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) there was an unacceptable delay between referral for surgery and being offered an appointment (*upheld*); and
- (b) the Board failed to provide a clear and consistent explanation for the delayed appointment (*upheld*).

**Redress and recommendations**

	<i>Completion date</i>
The Ombudsman recommends that the Board:	
(i) write to Mr C to apologise for their failure to provide him with surgery within their own targets of 12 weeks from referral;	15 September 2010
(ii) write to Mr C to apologise for their failure to provide him with an explanation for the delay in offering him an accurate date for surgery within their target period and also their failure to adhere to their 'guaranteed' date for surgery of 18 September 2009; and	15 September 2010
(iii) review the way they carry out and monitor referrals for surgery.	15 September 2010

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

## **Main Investigation Report**

### **Introduction**

1. On 5 August 2009, Mr C complained to my office about the response provided to the concerns he had raised with Lothian NHS Board (the Board) about the length of time he had spent whilst awaiting surgery for an abscess in the groin area. In addition he raised a number of concerns about the care and treatment provided to him when he attended the Accident and Emergency Department at St John's Hospital in Livingston.

2. Mr C complained that he first attended his GP due to concerns over a lump which had developed in his groin. His GP explained that he would require surgical intervention and agreed to refer him to a surgeon. The GP made a routine referral on 19 August 2008. It was not until Mr C received a letter sent on 27 July 2009 that he was given a date for his surgery. In this letter it was explained that his 'guaranteed date' for surgery was 18 September 2009 although it was also noted that he was on the short notice cancellation list and it was hoped that an appointment would be available before this date. The Board, however, failed to follow this up and a further date for the operation was not confirmed until 7 October 2009 when an earliest date of 20 October 2009 was provided. Mr C declined this offer.

3. The complaints from Mr C which I have investigated are that:

- (a) there was an unacceptable delay between referral for surgery and being offered an appointment; and
- (b) the Board failed to provide a clear and consistent explanation for the delayed appointment.

4. Mr C also complained about the care and treatment provided to him when he visited the Accident and Emergency Department at St John's Hospital in Livingston. However, I concluded that an examination of this aspect of his complaint would not achieve anything further for either Mr C or the Board.

### **Investigation**

5. Investigation of this complaint involved obtaining, and conducting a review of, the complaints correspondence and clinical records. Information relating to waiting times was requested from the Board and details of Scottish Government waiting times obtained. My complaint reviewer has also obtained the advice of one of my independent clinical advisers who has commented on the case.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Board were given an opportunity to comment on a draft of this report.

**(a) There was an unacceptable delay between referral for surgery and being offered an appointment**

7. Mr C complained that he first attended his GP on 16 August 2008 due to concerns over a lump which had developed in his groin. His GP explained that he would require surgical intervention and agreed to refer him to a surgeon. The GP made a routine referral on 19 August 2008 and this referral was received on 20 August 2008. On 24 September 2008 Mr C received a letter from the Department of General Surgery advising him that he had been placed on a waiting list for a routine appointment. He was also advised that the estimated maximum waiting time for the appointment would be 18 weeks.

8. On 5 November 2008 Mr C was sent another letter from the Department of General Surgery advising that they had arranged an out-patient appointment for him with a consultant surgeon on 10 November 2008. Following this appointment the surgeon considered that a further opinion was required and made an additional referral, on 11 November 2008, to a consultant colorectal surgeon. On 4 December 2008 Mr C was sent a further letter explaining that he was now on a further general surgery waiting list with an estimated maximum waiting time of 18 weeks.

9. On 21 January 2009 the Board sent Mr C a letter explaining that an appointment had been made for him to attend a consultant colorectal surgeon on 4 February 2009. Mr C attended this appointment where he was informed that surgery was planned as a means of improving his quality of life. Mr C agreed to surgery and was given a further routine referral to the surgical waiting list.

10. On 26 March 2009 Mr C attended the Accident and Emergency Department at the St John's Hospital in Livingston as his abscess was leaking fluid. The wound was assessed. As Mr C was on the elective surgery waiting list, and as the consultant did not consider that emergency surgery was required, no further action was taken.

11. Mr C then wrote to the Board on 23 June 2009 complaining about the delay in obtaining surgery. This letter was acknowledged by the Board on 29 June 2009 and a holding letter was issued on 16 July 2009. The response was issued on 27 July 2009. This response explained that Mr C received his first out-patient appointment after 11 weeks, within the 18 week Scottish Government target. The letter went on to explain that following the initial referral, a further referral, this time to a consultant colorectal surgeon, was made and Mr C was reviewed on 4 February 2009, within 12 weeks, (the referral again mentioned the Scottish Government 18 week target). Following this consultation the consultant colorectal surgeon made a routine referral to the surgical waiting list.

12. This letter stated that Mr C now had a guaranteed date for receiving surgery of 18 September 2009 (and made no mention of the delay between this and the original referral to the surgical list on 4 February 2009) and also noted that Mr C had agreed to accept a short notice cancellation should one arise prior to this date.

13. On 10 August 2009 my office received a complaint from Mr C concerning the length of time he had spent waiting for his surgery and the treatment he received at St John's Hospital in Livingston.

14. On 17 September 2009 Mr C confirmed to my office that he had received no communication in respect of the 'guaranteed' appointment he had been given for 18 September 2009.

15. The Board have explained that on 17 September 2009 they identified, during a routine sweep on un-booked appointments, that this case was a 'potential trip' and that they may have missed contact with Mr C. They have explained that they tried, at this stage, to contact Mr C by telephone, both at his home, and office. They have explained that messages were left on Mr C's telephone at this time.

16. On 29 September 2008 my complaint reviewer telephoned the Board to enquire why Mr C's surgery had not gone ahead despite his 'guaranteed' appointment date of 18 September 2009. His call was returned by a patient liaison officer later that day who explained that she could find no reason for why this guaranteed date had been given and advised that the date provided should have been 10 October 2009. She also confirmed that Mr C was due to attend

hospital that day for his pre-admission assessment and that surgery was due to be carried out the next day.

17. The Board have advised that a letter was sent out to Mr C on 5 October 2009, by registered post, advising that they had been unable to contact him and asking him to telephone the Waiting List Office to discuss his surgery.

18. On 7 October 2009 Mr C called the Waiting List Office and was offered surgery dates of 20, 21 or 27 October 2009. Mr C declined the offer of these appointments.

19. In their response to Mr C's initial complaint the Board have explained that he was seen within the Scottish Government's target time of 18 weeks following his referral from his GP. Mr C was seen almost 12 weeks after this referral. As the consultant surgeon decided Mr C required a specialist review he was referred to a consultant colorectal surgeon and attended on 4 February 2009, some 12 weeks after the further referral. It was not until 26 June 2009 that Mr C was added to the in-patient waiting list and, apart from the unaccountable date of 18 September, 20 October 2009 was the first offered date for surgery, some 61 weeks after first referral.

*(a) Conclusion*

20. The Scottish Government guidance in place at the time of these referrals stated that a patient should be offered an out-patient appointment within 18 weeks of referral. By March 2009 the Board aimed to deliver a maximum wait of 12 weeks for both in-patient and out-patient services. These timescales related to the period between referral and consultation. However, if further investigations or referrals were required the period would begin again.

21. It is only with the introduction of the new Scottish Government 'Referral to Treatment Standard' in December 2011 that target times will be measured from the date of referral through to the treatment stage for non-urgent referrals. This will bring in a maximum waiting time of 18 weeks from referral to treatment.

22. In Mr C's case, his initial referral for an out-patient appointment was received on 20 August 2008 and the consultation took place on 10 November 2008 (within 12 weeks). The following referral to the consultant colorectal surgeon took place on 4 February 2009 (again within 12 weeks).

23. However, no information regarding potential dates for surgery was provided by the Board between the date of referral by the consultant colorectal surgeon on 4 February 2009 and the letter from the Board on 28 July 2009. It appears that the 4 February referral letter was lost. The Board have stated that this was due to human error and that it was 'not possible to identify exactly where the fault lies'. They have further pointed out that 'during this time Mr C did not contact us to enquire about the delay. Had he done so, we would have been alerted to the problem and been able to take remedial action'.

24. It was 25 weeks between the date of referral from the consultant colorectal surgeon until Mr C was given a date for surgery of 18 September 2009, and 35 weeks between this referral and the further surgery dates of 20, 21 and 27 October 2009.

25. As no estimated or guaranteed date for surgery was provided for 25 weeks and, as the 'guaranteed date' of 18 September 2009 provided on 28 July 2009 was not met, I uphold this aspect of the complaint.

(a) *Recommendation*

26. I recommend that the Board: *Completion date*

(i) I recommend that the Board write to Mr C to apologise for their failure to provide him with surgery within their own targets of 12 weeks from the referral of 4 February 2009. 15 September 2010

27. As the Scottish Government's guidance for maximum waiting times of 18 weeks from referral to treatment is to be implemented by December 2011, I have no further recommendations to make on this aspect of the complaint.

**(b) The Board failed to provide a clear and consistent explanation for the delayed appointment**

28. As detailed above, following Mr C's appointment with the consultant colorectal surgeon on 4 February 2009, no information regarding potential dates for surgery was provided by the Board until the letter from the Board on 28 July 2009. In addition the referral letter of the 4 February was lost.

29. The Board have further stated that it:

'was unknown why Mr C had not been contacted before coming to the end of his 12 week wait, it would appear that there has been an oversight. The waiting list sets out all patient requiring surgery in date order based on their target date. Patients are ordinarily booked in date order to ensure that they are booked within the target date.'

30. The Board goes on to explain: 'This is an extremely rare occurrence, no other oversight of this type has occurred to date'. However, I have reviewed a case received in my office in February 2009. In this complaint against the Board, they have explained that, following an appointment at a Urology Prostate Assessment New Patient Clinic on 21 February 2008, a patient did not obtain a flexible cystoscopy because the referral form was not received in the department. It appears, after all, that this is not the sole occasion where treatment has been delayed due to administrative errors such as have occurred in Mr C's case.

31. In addition to the above, it appears that at no time was any explanation for the delay in Mr C receiving his operation provided to him in writing. The Board have explained to my office that the 4 February 2009 referral letter was apparently lost and that they cannot establish why this occurred but they do not appear to have explained this to Mr C. In addition they have explained that, had Mr C alerted them that he had received no correspondence from them regarding the surgery then the delay would have been shortened. I do not consider that this is an acceptable claim. The responsibility for providing the date for surgery rests with the Board. The patient should not be required to follow-up to ensure appointments have been made.

*(b) Conclusion*

32. From my review of the evidence it is clear that the Board was focussed on responding to Mr C's original complaints about the care and treatment provided to him when he visited the Accident and Emergency Department at St John's Hospital on 26 March 2009 and failed to address the question of delay.

33. They have not provided my office with a clear explanation for why the delays in providing Mr C with surgery occurred. They have explained that they cannot tell why the letter of 4 February 2009 was lost and have explained that their failure to identify why Mr C was not offered an appointment for surgery within 12 weeks was a result of a 'one off' administrative error (although I have identified a very similar case dealt with by our office last year).

34. From the review of the information provided by the Board I am satisfied that, in addition to failing to provide a clear explanation to my office, the Board did not provide Mr C with clear reasons for their failures to offer him an appointment for surgery and, when they did eventually provide a date, they failed to explain why this date was not met. For this reason I uphold this aspect of the complaint.

*(b) Recommendations*

- |   | <i>Completion date</i> |
|---|------------------------|
| 35. I recommend that the Board:   |                        |
| (i) write to Mr C to apologise for their failure to provide him with an explanation for the delay in offering him an accurate date for surgery within their target period and also their failure to adhere to their 'guaranteed' date for surgery of 18 September 2009; and | 15 September 2010      |
| (ii) review the way they carry out and monitor referrals for surgery.   | 15 September 2010      |

36. The Board have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Board notify him when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C

The complainant

The Board

Lothian NHS Board