Scottish Parliament Region: North East Scotland

Case 201104213: Tayside NHS Board

Summary of Investigation

Category

Health: General Surgical; communication

Overview

The complainant (Mrs C) raised concerns about the failure by Tayside NHS Board (the Board) to provide a British Sign Language (BSL) interpreter for a patient (Ms A) in Ninewells Hospital (the Hospital).

Specific complaint and conclusion

The complaint which has been investigated is that it was unacceptable for the Board not to provide a BSL interpreter during Ms A's 12-day in-patient admission to the Hospital in July 2011 *(upheld)*.

Redress and recommendations

The Ombudsman recommends that the Board:	*Completion date*
(i) consider amending their Interpretation and Translation Policy to highlight the legal duties staff have and to explain that using families, lipreading and pen and paper is not likely to be an adequate or reasonable response to the needs of a BSL user. This should make clear that BSL is a registered language and not simply signed English;	31 May 2013
(ii) produce further guidance for staff on: what the protocol is once a patient makes staff aware that they need a BSL interpreter; who is responsible for arranging this and how the interpreter's availability is to be coordinated with that of the health professionals involved; and how reassurance and progress on getting an interpreter should be communicated back to the patient;	31 May 2013
(iii) consider providing further training to staff on deaf culture, language and legal rights;	31 May 2013

(iv)	consider seeking input from deaf people on the Board's Interpretation and Translation Operational Group to review the effectiveness of the implementation of the Interpretation and Translation Policy; and	31 May 2013
(v)	offer to meet with Ms A and a BSL interpreter to answer any questions she has about her treatment and to apologise, explain and feedback how her complaint has helped them to develop their service.	10 April 2013

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

Main Investigation Report

Introduction

1. The complainant (Mrs C) complained about the failure by Tayside NHS Board (the Board) to provide a British Sign Language (BSL) interpreter for a patient (Ms A) in Ninewells Hospital (the Hospital). Mrs C said that Ms A was a BSL user with very limited lipreading ability. She did not use verbal communication and did not have a good understanding of written English. She said that during her time in Hospital, Ms A had repeatedly pointed to a poster on the wall, which was for interpreter services, to try to make the medical staff understand what she was trying to communicate. She said that the poster was out of date and contained incorrect contact details for interpreter services. She also said that Ms A had handed over a BSL interpreter's card to staff on two separate occasions.

2. The complaint from Mrs C which I have investigated is that it was unacceptable for the Board not to provide a BSL interpreter during Ms A's 12-day in-patient admission to the Hospital in July 2011.

Investigation

3. Investigation of the complaint involved reviewing the information received from Mrs C and the Board's medical records for Ms A. My complaints reviewer also obtained advice from my equality and diversity adviser (Adviser 1) and a medical adviser (Adviser 2).

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. An explanation of the abbreviations used in this report is contained in Annex 1. A list of the legislation and policies considered is at Annex 2. Mrs C and the Board were given an opportunity to comment on a draft of this report.

Complaint: It was unacceptable for the Board not to provide a BSL interpreter during Ms A's 12-day in-patient admission to the Hospital in July 2011

5. Ms A was admitted to the Hospital on 6 July 2011. It was recorded on the Surgical Admission Document that she was deaf. This form also stated, 'number to contact if need help with sign language available in nursing notes'. On another document completed when Ms A was admitted to the Hospital, it was recorded that Ms A's first language was English. However, the form also

stated that sign language was her preferred method of communication and that an interpreter was required. Telephone numbers for interpreter services and Social Work were recorded on the form. However, an entry in the nursing records stated that Ms A could lipread and that sign language and a pen and paper were also used to communicate.

6. On 7 July 2011, it was recorded in the notes that that Ms A became upset after meeting a pharmacist because she did not understand what was happening. Staff at the Hospital contacted her father. It was also recorded in Ms A's notes that she was deaf and that staff could communicate using a pen and paper. It was recorded that she could lipread if spoken to slowly. On the following day, it was recorded at 19:30 that Ms A felt isolated due to being deaf and not being able to communicate. The records also stated that the family were updated and they then used sign language to update Ms A. It was recorded in the notes that a referral was made to the translating team.

7. On 9 July 2011, it was recorded that that an interpreter was to be contacted at the family's request. The notes stated that Ms A was deaf and could not speak, but could lipread well. At 11:55 that day, it was recorded that staff were unable to contact an interpreter at that time.

8. Ms A had a computerised tomography (CT) scan the following day and this showed an abscess on her appendix. There is a further entry at 13:30 on that day that staff were still unable to contact an interpreter. In their response to Mrs C's complaint, the Board said that the Registrar discussed the procedure that Ms A was to undergo when family members were present. The anaesthetic record stated that the anaesthetic plan / techniques were, 'explained through her dad + sign language + written instructions'. Ms A had her appendix removed later that day.

9. On the following day, it was recorded in Ms A's notes that she could lipread very well if you talked slowly. The member of staff also recorded that she had written things down for Ms A and that Ms A had written things for her. The member of staff recorded that she had spoken to a social worker and had told them that she believed that an interpreter had been contacted and was to come in, as one of the surgical doctors was expecting someone to sign while they explained the surgery that Ms A had undergone. She said that so far, no one had spoken to Ms A. There are a number of further entries in the notes that state that Ms A was deaf, but could lipread and communicate with staff well. An

entry on 13 July 2011 said that she managed to communicate with staff and understood what was being said to her.

10. Ms A was discharged from the Hospital on 18 July 2011. The discharge letter stated that she had been diagnosed with 'appendicitis with abscess' and her appendix had been removed.

11. On 5 October 2011, a Professor of Surgery at the Hospital wrote to Ms A's GP to say that she was profoundly deaf and communicated by sign language. He said that she had informed him that she was in the Hospital for 12 days and an interpreter was not organised. He stated that she was clearly upset by this and he apologised on behalf of the Hospital. The Professor of Surgery also wrote to the Board's Complaints Team about this on the same day.

12. Mrs C wrote to the Board to complain on Ms A's behalf on 15 November 2011. The Board did not issue a response until 4 May 2012. They apologised for the delay in responding and said that, as a result of Ms A's experience, four BSL interpreters had been identified who could be contacted in exceptional circumstances and out of office hours, when Dundee Translation and Interpretation Service was not available. The Board said that contact numbers for these interpreters were circulated throughout the Surgical and Accident and Emergency Services in December 2011. They said that in addition, the Interpretation and Translation Service had held awareness sessions within the Surgical Service to ensure that staff were fully aware of the indications for using the service. They apologised that Ms A's communication needs were not met.

Advice obtained

13. I asked Adviser 1 if she considered that staff had taken reasonable and appropriate steps to obtain a BSL interpreter for Ms A. In her response, Adviser 1 said that in her opinion, staff did not take reasonable and appropriate steps to obtain a BSL interpreter for Ms A in line with their duties under section 20 of the Equality Act 2010. She said that she based this conclusion on the fact that at the point of admission on 6 July 2011, a note was made that Ms A needed an interpreter and her method of communication was sign language. Adviser 1 said that it was good to see that the admission form requested this information, but it was not clear how, if at all, staff acted to meet this need once it was recorded in the notes.

14. Adviser 1 commented that despite this clear note, throughout Ms A's stay in the Hospital, staff relied on written English, lipreading and family members with limited sign language abilities to communicate essential information to her. She said that the Board's response to Mrs C's complaint stated that a referral was not made to the Interpretation and Translation Service until 8 July 2011 and this only led to the supply of a telephone number and not the booking of an interpreter. She said that this letter suggested that staff concluded that Ms A was happy to lipread and use a pen and paper. However, it also acknowledged 'barriers to effective communication'.

15. Adviser 1 also commented that the only record in the notes of attempts to contact an interpreter took place at the weekend. Unsuccessful attempts were made to contact the interpreter on Saturday, 9 July 2011 and on Sunday, 10 July 2011. She stated that given the acknowledged lack of available interpreters, this was not likely to be a successful approach. Adviser 1 said that it is not clear whether any more attempts were made during the working week, but no interpreter was provided before Ms A was discharged on 18 July 2011.

16. Adviser 1 said that Ms A's notes also record that some staff believed there were no communication issues. She said that it was concerning that this conclusion was reached given that Ms A's first language was BSL and she had not at any point been provided with information about her health in BSL. She said that two separate documents included the statement that, 'if interpretation is required then …'. Adviser 1 suggested that this would suggest that staff viewed BSL interpretation as an option rather than a right. This might explain why the booking of an interpreter was not made a priority.

17. I also asked Adviser 1 for her comments on what exactly staff should have done to meet Ms A's needs. In her response, Adviser 1 said that once they had been alerted to Ms A's need for a BSL interpreter, a clear plan should have been drawn up to try to coordinate the availability of doctors and others communicating with Ms A and a BSL interpreter, sufficiently trained to be able to communicate complex medical issues. She said that staff should have begun this plan as early as possible to maximise opportunities to book an interpreter, especially to capitalise on the admission taking place during the 'working week'. She commented that it appeared that two calls were eventually made to the interpretation service but these were both made at the weekend and were unsuccessful.

18. Adviser 1 said that the staff involved should have been aware that BSL is not simply signed English. It is a different language and was recognised as an official language in 2003. Adviser 1 stated that staff should also have been aware that for the same reasons that written English is not a substitute for BSL. Staff should not have assumed that Ms A was able or happy to lipread. She may have had some skills in this area but this cannot be assumed and again is not a substitute for sign language.

19. The Board's Interpretation and Translation Policy stated that in exceptional circumstances, the use of a family member or friend (over the age of 16) would be acceptable if a registered interpreter is not available and the consultation cannot be rebooked for when an interpreter will be present. However, their Clinical Informed Consent Policy stated that, '[I]t is not appropriate to use family members, friends or neighbours to interpret for those patients who do not speak English or are deaf'. Adviser 1 commented that despite Ms A's family explaining that they were not able to sign well, the Board used them to interpret on a number of occasions including when anaesthetic was given. She said that the length of Ms A's stay would suggest that there should have been many opportunities for staff to coordinate the interpretation provision with consultations with health professionals.

20. Adviser 1 stated that staff should have received training on deaf awareness and / or reasonable adjustment to be able to understand the importance of planning ahead and of the duties the Board have under the Equality Act 2010 to meet the needs of disabled people. She commented that the Board's Single Equality Scheme and Action Plan 2010-2014 stated that, '[S]taff have had awareness sessions on how to access information regarding interpretation services for deaf patients'. Adviser 1 said that it was not clear whether all staff received this and whether the sessions also clarified that written English, lipreading and use of family are not adequate reasonable adjustments unless the individual accepts them as such.

21. I asked Adviser 1 for her comments on the Board's Interpretation and Translation Policy. In her response, she said that this appeared sound except that it did not explain to staff that the provision of interpreters and accessible information is a legal duty under Section 20 of the Equality Act 2010. She said that this may pose a risk if staff do not appreciate the serious nature of not following the policy.

22. Adviser 1 also said that there were some areas where additional guidance would be useful, for example, clarification that BSL is a registered language and not simply signed English. She said that it should also state that written communication was, therefore, unlikely to be a substitute. She also said that the Interpretation and Translation Policy should clarify what the protocol was once a patient made staff aware that they needed an interpreter. She said that it should clarify who was responsible for arranging this and how the interpreter's availability is to be coordinated with that of the health professionals involved. She also said that it should state how reassurance and progress on getting an interpreter should be communicated back to the patient.

23. Adviser 1 stated that the Equality Impact Assessment of the Interpretation and Translation Policy was thorough, but she would question the statement in the policy that 'awareness sessions can be provided on request'. She stated that these probably need to be mandatory and there is a suggestion in the Single Equality Scheme that something more like mandatory training is actually being rolled out.

24. Finally, Adviser 1 said that she thought that the identification of four interpreters who were available out-of-hours was a good idea, as was the running of awareness sessions for the Surgical Service on the Translation and Interpretation Service. However, she said that she was not sure that they addressed the substantive issue, which appeared to her to be the failure to plan ahead once Ms A's needs were known and a lack of swift implementation of the Interpretation and Translation Policy. She stated that had staff acted immediately, then they might not have needed an out-of-hours service.

25. Although Ms A signed a consent form the operation that was carried out on 10 July 2011, Mrs C said that she was unable to give informed consent for her care and treatment, as she did not fully understand what was happening to her. A note in the medical records stated, 'consent when family present'. The Board's Informed Consent Policy stated that for consent to be valid, the patient must have received sufficient information. It also stated that:

> 'NHS Tayside is committed to ensuring that those patients who may need extra support to make an informed decision, e.g. whose first language is not English, receive the information they need and are able to communicate appropriately with healthcare staff. It is not appropriate to use family members, friends or neighbours to interpret for those patients who do not speak English or are deaf.'

I spoke to Adviser 2 about this matter. He said that it was impossible to say for sure if informed consent was given on the operation carried out on 10 July 2011, but the failure to obtain an interpreter certainly cast doubt on this. It is clear to me, however, that that by failing to obtain an interpreter, the Board did not adhere to their Informed Consent Policy.

Conclusion

26. In their response to our enquiries, the Board said that there is both a national and local shortage of registered interpreters for BSL. I recognise that this is the position. However, I do not consider that staff at the Hospital made sufficient attempts to try to obtain a BSL interpreter for Ms A despite the fact that it had clearly been noted that that Ms A needed an interpreter and that her method of communication was sign language.

27. It was clear from the records that that Ms A felt isolated due to being deaf and not being able to communicate. Ms A's notes stated that that an interpreter was to be contacted at the family's request. Mrs C said that Ms A's family know very little BSL and they would not have been able to communicate the information received from medical staff to her. I consider that it was unacceptable for the Board not to obtain BSL interpretation for Ms A during her 12-day in-patient admission to the Hospital in July 2011. I, therefore, uphold the complaint.

Recommendations

28. I recommend that the Board:	*Completion date*
(i) consider amending their Interpretation and Translation Policy to highlight the legal duties staff have and to explain that using families, lipreading and pen and paper is not likely to be an adequate or reasonable response to the needs of a BSL user. This should make clear that BSL is a registered language and not simply signed English;	31 May 2013
(ii) produce further guidance for staff on: what the protocol is once a patient makes staff aware that they need an interpreter; who is responsible for arranging this and how the interpreter's availability is to be coordinated with that of the health	31 May 2013

	professionals involved; and how reassurance and progress on getting an interpreter should be communicated back to the patient;	
(iii)	consider providing further training to staff on deaf culture, language and legal rights;	31 May 2013
(iv)	consider seeking input from deaf people on the Board's Interpretation and Translation Operational Group to review the effectiveness of the implementation of the Interpretation and Translation Policy; and	31 May 2013
(v)	offer to meet with Ms A and a BSL interpreter to answer any questions she has about her treatment and to apologise, explain and feedback how her complaint has helped them to develop their service.	10 April 2013

29. 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.

Annex 1

Explanation of abbreviations used

Mrs C	The complainant
The Board	Tayside NHS Board
BSL	British Sign Language
Ms A	The aggrieved
The Hospital	Ninewells Hospital
Adviser 1	The Ombudsman's equality and diversity adviser
Adviser 2	The Ombudsman's medical adviser
CT scan	Computerised tomography scan

Annex 2

List of legislation and policies considered

The Equality Act 2010

The Equality Act 2010 – a guide for service users. Action on Hearing Loss. London. May 2011

Guidance on providing British Sign Language/English interpreters under the Disability Discrimination Act 1995. For employers, trade organisations and service providers

NHS Tayside Interpretation and Translation Policy January 2011

NHS Tayside Clinical Informed Consent Policy September 2009

NHS Tayside Single Equality Scheme and Action Plan 2010-2014