

Scottish Public Services Ombudsman Act 2002

Report by the Scottish Public Services Ombudsman of an investigation into a complaint against:

Two GPs in the Lothian area (Dr L and Dr M)

Complaint as put by Mr W

1. The account of the complaint provided by Mr W was that on 5 September 2002 he telephoned Dr L to discuss the general medical condition of his mother. Dr L promised to contact Mr W if there was any change in his mother's condition. On 6 September, Mr W received a telephone call from the residential home (the Residential Home) where his mother lived advising him that she was waiting for an ambulance to take her to hospital. Mr W telephoned the Practice to seek clarification. Dr L was not available and the Receptionist (the Receptionist) said she would get Dr L to return his call. Mr W then waited with his mother for the ambulance. When it arrived, he gave the crew information about her previous medical history. He then drove his car home so that he could walk to the hospital. His wife told him that Dr L had telephoned and had said that Mr W should return his call later that day or that he and his family would be removed from the Practice list of patients. On 9 September, Mr W received a telephone call from Dr M and they discussed the events of 6 September. On 10 September, Dr M wrote to Mr W and advised him that he had discussed matters with Dr L and he had been unhappy with the comments Mr W made to the Receptionist. Dr M thought that the doctor/patient relationship had broken down and that Mr W should find a new medical Practice. Mr W requested an independent review of his complaint which the convener subsequently refused.

2. The complaint subject to investigation was that Dr L and Dr M acted unreasonably in removing Mr W from the Practice's list of patients.

Investigation

3. The statement of complaint for the investigation was issued on 28 May 2003. Dr L's and Dr M's comments were obtained and relevant documents concerning Mr W's complaint were examined. Oral evidence was taken from Mr W, Dr L, Dr M and the Receptionist. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked.

Statutory Provisions

4. The **National Health Service (General Medical Services) (Scotland) Regulations 1995, Schedule 1, Terms of Service for Doctors**, state '9(1) ... a doctor may have the name of any person removed from his list by giving notice to the [relevant Health Board] ...'.

5. The regulations do not require a GP to give a reason and they do not provide the patient with a right of appeal.

Professional guidance

6. 'Good Medical Practice', a 2001 General Medical Council (GMC) leaflet for doctors, includes:

5. 'The investigations or treatment you provide or arrange must be based on your clinical judgment of patients' needs and the likely effectiveness of the treatment. You must not allow your views about patients' lifestyle, culture, beliefs, race, colour, gender, sexuality, disability, age, or social or economic status, to prejudice the treatment you provide or arrange. You must not refuse or delay treatment because you believe that patients' actions have contributed to their condition'

24. 'Rarely, there may be circumstances, for example where a patient has been violent to you or a colleague, has stolen from the premises, or has persistently acted inconsiderately or unreasonably, in which the trust between you and the patient has been broken and you find it necessary to end a professional relationship with a patient. In such circumstances, you must be satisfied your decision is fair and does not contravene the guidance in paragraph 5; you must be prepared to justify your decision if called on to do so. You should not end

relationships with patients solely because they have made a complaint about you or your team, or because of the financial impact of their care or treatment on your Practice.'

25. 'You should inform the patient, orally or in writing, why you have decided to end the professional relationship. You must also take steps to ensure that arrangements are made quickly for the continuing care of the patient, and hand over records to the patient's new doctors as soon as possible.'

7. 'Removal of Patients from GPs' Lists', guidance produced by the Royal College of General Practitioners (RCGP) in June 1997, included:

'(C) Guidance on removing patients due to irretrievable breakdown of the doctor-patient relationship

'Occasionally patients persistently act inconsiderately and their behaviour falls outside that which is normally considered to be reasonable. In such circumstances there may be a complete breakdown in the doctor-patient relationship. It is important not to lose sight of the problem and to remember that the circumstances surrounding the breakdown may be perceived differently by the patient and the doctor. It is under these conditions that the potential for misunderstanding is greatest.

'... Steps to be taken with the patient

- Inform the patient personally that there is a problem and consider arranging a meeting ...
- ... Try to elicit the patient's perspective ...
- Be prepared to negotiate with the patient over specific problems ...'.

8. I set out below certain key events and correspondence after 6 September 2002.

9 September - Dr M and Mr W had a telephone conversation about the events of 6 September. The possibility of a meeting was discussed and Dr M said he would make further enquiries.

10 September - Dr M wrote to Mr W and told him that he had spoken to Dr L who had assured him that in his telephone call to Mr W's wife, he had made no comment about the removal of other members of the family from the Practice list. It would seem that the doctor/patient relationship between Dr L and Mr W had broken down and that it may be in Mr W's interest to find another doctor locally.

13 September - Mr W wrote to the Practice Manager explaining his understanding of events and that he did not feel there was a breakdown in the patient/doctor relationship on his part. He presumed that the Practice would continue to look after his health care. He referred to the telephone conversation between Dr L and his wife about removal of the whole family from the Practice list. He stated 'I can only conclude that Dr L is being economical with the facts or that he is alleging that my wife fabricated part of the telephone conversation ...'.

17 September (drafted on 12 September but not posted until 17 September) - Dr M wrote to the Health Board with a request that Mr W be removed from his patient list.

18 September - Dr L wrote to Mr W. The letter included 'I felt annoyed at your display of rude and abusive behaviour towards myself on 6 September when you spoke to our Receptionist on the telephone. I later suggested to your wife that you apologise that afternoon or I would request that you be deregistered. You neither initiated any contact then or the following week and no apology has been forthcoming. It is disappointing that you continue to make misleading allegations suggesting that I wanted to have all of your family removed from the Practice list when this was clearly not the case. Clearly, because of your recent behaviour, I think that it is no longer appropriate for you to be registered on our Practice list and I have requested your deregistration'.

Mr W's evidence

9. **Mr W** said that he had been a patient at the Practice for many years and only saw Dr M once. He did not attend the Practice frequently but when he did, he always saw Dr L. Mr W had no previous problems or concerns about the treatment which Dr L had provided. Mr W recalled that Dr L telephoned him on 5 September and had asked how he thought his mother was doing. Mr W's mother had been discharged from the Royal Victoria Hospital (the first Hospital) earlier that day following an assessment for depression. Mr W told Dr L that he was concerned about his mother and asked if Dr L would be good enough to telephone him if there was any change in her circumstances. Mr W took that to include matters such as if his mother had to be moved from the Residential Home. Dr L agreed to Mr W's request.

10. The next day, Mr W received a telephone call from the duty officer at the Residential Home who said that Dr L had asked him to telephone to say that his mother was going to be admitted to a transitional Ward at the Western General Hospital (the second Hospital). Mr W was anxious to know why as Dr L had not indicated that a hospital admission was imminent. He telephoned the Practice and asked to speak to Dr L. The Receptionist was unable to contact him and said she would get Dr L to return the call. Mr W did not raise his voice and was not upset or angry but he was persistent as he needed to know what the plan was so that he could explain it to his mother before she was taken to hospital. Mr W made a comment that it appeared that his mother was being used as a tennis ball that the NHS were batting from court to court. In the past few days, his mother had been in the first Hospital and discharged back to the Residential Home and now back to the second Hospital. Mr W's comments about being batted around like a tennis ball were directed at the NHS in general and not at Dr L.

11. Mr W made his way to the Residential Home to wait for the ambulance. When it arrived, he made sure his mother was comfortable and then returned home so that he could park his car and walk up to the hospital. He was met by his wife who was upset and told him that Dr L had telephoned and set a deadline for Mr W to contact him by 4.00 pm. Dr L was looking for an apology for Mr W's rude and abusive remarks

made about him to the Receptionist. If no apology was forthcoming, the N family would be removed from the Practice's list of patients. Mr W chose to go to the hospital to see that his mother was settled in rather than return Dr L's telephone call. He did not intend taking any further action and was prepared to let the matter die down. He felt that Dr L had acted in the heat of the moment and issued an ultimatum without waiting to hear his side of the story. Dr L had not shown a willingness to resolve the matter informally and had already made up his mind that failing an apology then Mr W would be struck off.

12. Mr W received an unexpected telephone call from Dr M on 9 September. Dr M asked how Mr W's mother was doing. Dr M then asked Mr W about what happened on 6 September. Mr W said that he did not intend to pursue the matter further and that he was happy to mark time and reflect on events. Dr M suggested that a meeting might be a way to resolve the matter and Mr W was in full agreement. Dr M said that he would discuss the matter with Dr L and Mr W presumed that Dr M would contact him in due course. Mr W then received a letter from Dr M which said that perhaps it might be in his best interests to find another doctor locally as it seemed that the doctor/patient relationship had broken down. Mr W responded to Dr M's letter but before he received a reply, he received notification from the Health Board advising him that he was being removed from the Practice list. Mr W then received Dr L's letter in which he stated his annoyance and viewed Mr W's comments to the Receptionist about him as being rude and abusive. Dr L also said that as Mr W had not initiated contact with him or apologised, either then or the following week, then he had asked that his name be removed from the Practice list. Mr W could not understand this as he had spoken to Dr M on 9 September. It was never Mr W's intention to be rude or abusive to Dr L and had a face-to-face meeting taken place then he could have explained this to him.

Evidence from Dr L, Dr M and the Receptionist

13. The **Receptionist** had been employed at the Practice for over three years and she was not aware of any previous problems between Mr W and herself or other Practice staff. She recalled the telephone conversation with Mr W. She thought that he appeared anxious and harassed and was desperate to speak to Dr L. He was neither rude nor abusive towards her.

She tried without success to contact Dr L by telephone and on his mobile. She told Mr W she would pass on a message to Dr L. She remembered that Mr W had said that he needed to contact Dr L and that his mother had been 'batted about like a tennis ball'. The Receptionist was clear that Mr W did not say that Dr L was batting his mother about like a tennis ball but neither did he say that the NHS were batting his mother about like a tennis ball. She passed the message on to Dr L and mentioned Mr W's comments about his mother being batted around. She could not recall Dr M speaking to her about the telephone call prior to Mr W's removal from the Practice list.

14. **Dr L** said that he had had no major problems with Mr W. However, at times he felt that Mr W's manner could be deemed to be aggressive, abrupt or demanding. Dr L telephoned Mr W on 5 September to discuss his mother's health. He thought that Mr W was behaving in an aggressive and demanding manner and wanted Dr L to promise to let him know if there were any future changes in her circumstances. Dr L agreed to Mr W's request. The following day, staff at the Residential Home contacted him to say that they could not cope with Mr W's mother. Dr L confirmed her condition and contacted the second Hospital to see if they would admit her for assessment. Dr L then organised an ambulance to transfer Mr W's mother from the Residential Home to the second Hospital. He then telephoned the Residential Home and advised them that an ambulance had been ordered and could they inform Mr W of this and that he would contact him later that day. Dr L then faxed a letter to the second Hospital with information about Mr W's mother.

15. It was always Dr L's intention to telephone Mr W but he had to attend to urgent visits first. During the second visit, the telephone rang and it was the Receptionist. She said that Mr W wanted Dr L to telephone him and that he had made the comment that his mother was being batted about like a tennis ball. Dr L gained the impression that Mr W had been offhand in his comments. As Dr L had been involved in Mr W's mother's recent admissions to hospital, he felt that Mr W's comments about being batted around like a tennis ball had been predominantly directed at him. He had interpreted the comments to mean he had mistreated or abused Mr W's mother. Dr L telephoned Mr W at the earliest opportunity but he

was not available. He spoke to Mrs N and asked whether he could pass on a message through her. He remembered that he had spoken about Mr W's mother's readmission to hospital and that he thought that Mr W's behaviour during the conversation with the Receptionist was out of order. He requested that Mr W should apologise and explain his behaviour by 4.00 pm or by close of surgery that day or he would have to consider his deregistration from the Practice. Dr L did not think that he was acting in haste by issuing a deadline but he was looking for a response so that the matter could have been resolved by the close of that week.

16. As Mr W had not contacted him by close of surgery, Dr L spoke to Dr M to explain the situation. Dr L said that if Mr W did not contact him the following week then they would have to consider his deregistration. Dr M told Dr L late on 9 September that he had telephoned Mr W and had proposed a meeting. Dr L thought that it would be better for Mr W to communicate with him by letter or telephone. Dr M said that he would write a letter to Mr W and emphasise that the rest of the family would remain on the Practice list.

17. Dr L did not think that a meeting with Mr W would achieve any more. He feared that Mr W might become hostile in a face-to-face confrontation as he had been demanding and aggressive in the past. He accepted however that there would be no reference to this in Mr W's clinical records. Dr L was aware of the GMC guidelines about striking off being a last resort and that meetings should be considered in an effort to resolve the matter. However, the guidance also states that other forms should be considered and his preference was to communicate by letter or telephone. Dr L said that it had not been an overreaction to remove Mr W from the list. His reasons for asking for Mr W's removal were that (a) he had not responded to Dr L's request that he contact him directly to resolve matters; (b) Mr W's letter dated 13 September contained written untrue misleading comments that Dr L found offensive; and (c) the remarks about Mr W's mother being batted about were directed at least at him. The decision to remove Mr W from the Practice list had been put on hold for a week to give Mr W the opportunity to contact him as requested. Dr L did not make a final decision about Mr W's removal until he received Mr W's letter of 13 September.

18. **Dr M** said that he joined the Practice in 1993 and Mr W had been transferred to his list. He hardly ever saw Mr W and personally had no problems with him. Dr M was not aware of any previous problems between Dr L and Mr W. He remembered Dr L speaking to him about Mr W's telephone call to the Receptionist. Dr L said that he was waiting for an apology from Mr W and if none was forthcoming then he would ask Dr M to remove Mr W from the Practice list. Dr M, being Mr W's registered GP, thought that he should become involved in an effort to resolve the matter. He was fully aware of the GMC guidelines etc about striking off patients from the Practice list and that it should only be used as a last resort. He telephoned Mr W on 9 September and heard his version of events. Dr M suggested that perhaps a meeting might resolve the matter and Mr W was in agreement. Dr M then told Mr W that he would discuss the matter with Dr L. Dr M thought that Dr L would agree to a meeting but Dr L said that he felt a meeting would not change anything. Dr L told him that in the past Mr W's manner had been aggressive and demanding. Dr L felt strongly that the doctor/patient relationship between him and Mr W had broken down. In view of Dr L's concerns, Dr M took the view that it would not be appropriate for Mr W to remain on the Practice list.

19. Dr M wrote to Mr W and suggested that in view of the breakdown in the doctor/patient relationship, it might be in Mr W's interest to register with another Practice. However, the letter to the Health Board requesting Mr W's removal was put on hold to allow Mr W time to make contact with Dr L. Dr L spoke to Dr M on 17 September and said that he had received a letter dated 13 September from Mr W and in view of the misleading comments which it contained, he requested that Mr W be removed from the Practice list. Dr M stood by the decision to remove Mr W as he was concerned that his ongoing medical care might be compromised. He cited an example that Mr W might attend for a consultation when he was not available therefore Mr W would have to wait for his return. Dr M did not speak to either Mr W's wife or the Receptionist prior to removing Mr W from the list.

Findings

20. I have noted that the national guidance about removing patients from GPs' lists makes it clear that these should be rare events which should only happen in particularly difficult or trying circumstances. GPs are advised that, in effect, removal is a measure of last resort, and that careful consideration should be given to other measures, such as meetings with patients, before a final decision is made. Was the decision reached in a reasonable way in Mr W's case? Mr W had been a patient at the Practice for many years and he had no concerns about the treatment he had received from either Dr L or Dr M. Mr W tried to speak to Dr L to obtain clarification of why his mother needed to go into hospital. He was upset that Dr L had not contacted him earlier and admitted making comments about his mother being batted about like a tennis ball. Sadly, these comments were the start of the dispute.

21. Dr L said that Mr W had been struck off for three reasons. Firstly, that he had failed to respond directly to Dr L following his telephone conversation with Mrs N on 6 September. I have concerns about this telephone call because it included a deadline that if a response and an apology were not forthcoming by 4.00 pm or close of surgery that day then Dr L would have to consider Mr W's deregistration. At that time, Mr W's concerns were to see that his mother's admission to hospital was proceeding as smoothly as possible and I feel that it was unreasonable for Dr L to expect a response that afternoon. To impose such a deadline and threaten deregistration does not suggest a wish to resolve the matter, nor is it in accordance with the guidance as set out in paragraphs 6 and 7. Mr W was aware that Dr L wanted him to return the call but decided to wait to see if matters settled down. He then received a telephone call from Dr M on 9 September and it was left that Dr M would make enquiries to see if a meeting could be arranged. Dr M has stated that during their conversation he reminded Mr W that Dr L was expecting him to ring. However, to my mind, as Mr W had spoken to Dr M and he had agreed to take action, then there was no real necessity for Mr W to contact Dr L at that stage.

22. Secondly, Dr L found the comments which Mr W made in his letter of 13 September to be misleading and offensive. I accept that Mr W's remarks did not improve the situation. The comments related to whether

Dr L had said to Mr W's wife that the whole family would be struck off or only Mr W. Both Dr L and Mr W's wife have their own thoughts and recollections about what was said and I have no way of knowing if those could be resolved, but a meeting might have allowed the opportunity for any misunderstandings to be cleared up. However, even if Dr L's remarks about deregistration did only apply to Mr W it would have been more appropriate, given the seriousness of the matter, for him to have conveyed his message and the demand for an apology to Mr W himself. Mrs N would not then have been drawn into a dispute that was not of her own making.

23. Finally, Dr L took the view that Mr W's comments to the Receptionist about his mother being batted about like a tennis ball were directed at him. I can accept that he might feel angry if he thought his clinical judgment had been called into question as he was involved in Mr W's mother's admissions to hospital. While Dr L made the assumption that the comments were directed at him, Mr W has said that his criticism was meant to relate to the NHS in general and not Dr L. If he had had the opportunity to speak to Dr L in person then he would have been able to set the record straight as he had been happy with Dr L's clinical judgment in the past. Again, I feel that this matter could have been discussed at a meeting and all parties would have had a chance to put their views forward. Instead the complaint was dealt with by correspondence which failed to resolve the matter.

24. Dr L commented that he feared that Mr W could become hostile at a face-to-face meeting. However, I do not see any evidence which would substantiate this view and indeed, Dr L, Dr M and the Receptionist had not recorded any such problems in the past. Even if Dr L thought that Mr W could be abrupt, aggressive or demanding, then he should have taken action to bring his concerns to Mr W's attention. Dr M was in a difficult position in so far as Mr W was his registered patient and it fell to him to make the final decision on whether Mr W should remain on the patient list. What action did he take to try and establish the facts? He spoke to Mr W by telephone on 9 September and put forward a suggestion that a meeting might be of benefit. He then discussed the matter with Dr L who would not agree to a meeting and then sent Mr W a letter the next day

with a suggestion that it might be in his interest to find another doctor locally. Bearing in mind that there had been no major problems in the past, I feel that Dr M should have taken a stronger line and sought comments from the Receptionist and Mr W's wife and then given more thought as to whether a meeting was appropriate before writing in these terms to Mr W. It was this letter that resulted in Mr W's response of 13 September which in turn inflamed an already difficult situation.

25. To summarise, the dispute in this case developed because of Dr L's reaction to Mr W's remarks about his mother being batted about like a tennis ball, Mr W's failure to return the telephone call on the 6 September, and the content of Mr W's letter of 13 September. On these grounds, Dr L and Dr M made the decision to remove Mr W from the Practice list. Leaving aside the question of whether or not a meeting should have taken place before such a decision was made, I note that Mr W's letter was written in response to Dr M's letter of 10 September (which was sent just one day after they had spoken on the telephone) informing him that the doctor/patient relationship had broken down and that he should consider finding another doctor. On 12 September a letter to the Health Board requesting Mr W's removal was drafted. This was actioned after Mr W's letter of 13 September was received by the Practice. As a result, Mr W was notified by the Health Board that he had been struck off before he had received a direct response to his letter from the Practice. The nature and sequence of events and the decision to deregister Mr W do not appear to me to be in the spirit of the guidance which clearly states that removing a patient should only be a rare event and happen in particularly difficult or trying circumstances.

26. I **recommend** that Dr L and Dr M review their procedures and where there is an indication that the doctor/patient relationship is in danger of breaking down then serious consideration is given to holding a meeting, in order to attempt to find a suitable resolution. In this instance, I consider that Dr L and Dr M could have done more to stop the situation with Mr W escalating. Accordingly, I uphold the complaint. I further **recommend** that Dr L and Dr M apologise to Mr W for the shortcomings which have been identified.

Conclusion

27. I have set out my findings in paragraphs 20 - 26. It is with regret that I have to report that Dr L and Dr M have refused to accept my recommendations.

Professor Alice Brown
Scottish Public Services Ombudsman

13 February 2004