

**Case 200402334: A Dental Practice in the Greater Glasgow and Clyde NHS Board area<sup>3</sup>**

**Introduction**

1. On 23 March 2005 the Ombudsman received a complaint from a woman (referred to in this report as Ms C) about the attitude of a dentist and about the Dental Practice's handling of her complaint about it.

2. The complaints from Ms C which I have investigated were:

- (a) that the dentist spoke to Ms C in an aggressive, bullying way, within the hearing of Practice staff and other patients;
- (b) that the Practice's handling of Ms C's complaint made the situation worse by avoiding the issues, making factual inaccuracies, giving the impression that she had resisted payment and asking her to apologise; and that they ignored her requests for a copy of their complaints procedure.

3. Following the investigation of all aspects of this complaint I came to the following conclusions:

- (a) not upheld, see paragraph 19;
- (b) partially upheld, see paragraphs 20 to 24.

4. In the light of these findings, the Ombudsman recommends:

- i. that the dentist acknowledges in writing to the Ombudsman that asking Ms C to apologise was not a helpful way to try to resolve her complaint;

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<sup>3</sup>Argyll and Clyde Health Board (the former Board) was constituted under the National Health Service (Constitution of Health Boards) (Scotland) Order 1974. The former Board was dissolved under the National Health Service (Constitution of Health Boards) (Scotland) Amendment Order 2006 which came into force on 1 April 2006. On the same date the National Health Service (Variation of the Areas of Greater Glasgow and Highland Health Boards) (Scotland) Order 2006 added the area of Argyll and Bute Council to the area for which Highland Health Board is constituted and all other areas covered by the former Board to the area for which Greater Glasgow Health Board is constituted. The same Order made provision for the transfer of the liabilities of the former Board to Greater Glasgow Health Board (now known as Greater Glasgow and Clyde Health Board) and Highland Health Board.

- ii. that the Practice send complainants a copy of their complaints procedure when a complaint is first made, rather than with their reply to the complaint and that the Practice confirm to her that they will do so.

### **Investigation and findings of fact**

5. I was assisted in the investigation by one of the Ombudsman's clinical advisers, a practising dentist. His role was to explain, and give an opinion on, the clinical background to the complaint. We examined the papers provided by Ms C and the Practice's complaint file. Although the complaint did not concern dental treatment, we also examined some of the Practice's dental treatment claims, obtained from the Scottish Dental Practice Board, and Ms C's dental records for any relevant background information. As the Practice's complaints procedure is required to be in line with that set out in the NHS complaints procedure, both procedures were compared. To identify any gaps and discrepancies in the evidence, the content of some of these papers was checked against information elsewhere on file and also considered against my own and the adviser's knowledge of the issues concerned. I am, therefore, satisfied that the evidence has been tested as robustly as was possible, bearing in mind the difficulty of establishing the facts in a complaint about attitude where no independent witnesses were present. Finally, in line with the practice of this office, the standard by which the complaint was judged was whether the events were reasonable, in the circumstances, at the time in question.

6. Ms C and the dentist both took up the opportunity to comment on a draft of this report.

7. I turn now to the events in question. I would normally cover the two aspects of the complaint separately. In this case, because the issues are inter-linked, it makes sense to tell Ms C's story chronologically, covering the issues as they arise.

8. Ms C explained that between October and December 2004 she had received treatment from another dentist at the Practice. I shall refer to him as Dentist 1. Dentist 1 then left the Practice so, when Ms C needed further treatment, she saw the dentist who is the subject of the complaint and is also the owner of the Practice. I shall refer to him as Dentist 2. He saw Ms C on 10 and 27 January 2005. After the treatment on the 27<sup>th</sup>, Ms C said she asked the receptionist why a charge had been made for these two consultations with

Dentist 2. She was surprised to be charged because of the history of unresolved dental problems she had had; in other words, she believed that the January 2005 treatment was simply a continuation of her earlier treatment with Dentist 1.

9. The dental records show clearly that the tooth which Dentist 1 dealt with was UR5 (teeth are identified in this way to indicate their location in the mouth). The tooth examined and treated by Dentist 2 was UR7; in other words, it had no connection with Dentist 1's work. The Practice Manager explained this accurately and in detail to Ms C in his reply to her complaint.

10. Ms C said that when she spoke to the receptionist on 27 January about the charge, the receptionist asked Dentist 2 to answer. Ms C said that Dentist 2's manner in doing so was aggressive and bullying; he said that any problem with Dentist 1's work should be taken up with that dentist (as he had been an independent practitioner within the Practice) and that any complaint should be made through the NHS complaints procedure; he accused Ms C of unreasonableness, saying he had provided treatment in good faith. Ms C said she felt embarrassed and upset, particularly as this had occurred in the reception area, in the presence of staff members and within earshot of other patients (her recollection was that the waiting room door was open). Despite what Ms C felt was her visible state of shock, she said Dentist 2 continued to accuse her of unreasonableness. Ms C said she, therefore, simply asked him to stop so she could pay the bill and leave.

11. In his two replies to the complaint the Practice Manager passed on to Ms C Dentist 2's regrets that the situation had arisen and his belief that he had been straightforward, assertive and forthright but not aggressive and that he had been disappointed by Ms C's resistance to the request for payment because he had done the work in good faith and to a good standard. Dentist 2 later told me that no other patients were within hearing, the door of the waiting room being closed, with music being played inside the room. He said that if a member of the public had appeared, he would have ended the conversation or continued it in another area.

12. Ms C felt that the Practice Manager's replies to her complaint made the situation worse by side-stepping the complaint, making factual inaccuracies, giving the impression that she had been trying to resist payment and asking her to apologise.

13. Ms C's complaint to the Practice covered Dentist 2's manner at Reception (and included a query about the complaints procedure, which I shall explain later). The Practice Manager's reply gave Dentist 2's account of the conversation, explained that the work had not been connected to Dentist 1's work, denied the accusations of aggression etc and passed on regrets that the situation had arisen. In other words, apart from the query about the complaints procedure, it covered the issues in the complaint.

14. The alleged factual inaccuracies in the Practice's complaint replies arise from Ms C's last appointment with Dentist 1 (22 December 2004). At that time the Practice told Ms C that Dentist 1 was leaving and that they would be ceasing to have NHS patients in due course. The alleged inaccuracies related to whether Ms C had replied that she would be moving to another practice. Ms C said she had not said this. The dental records for that day comprise Dentist 1's record of the consultation, followed by an entry in a different hand, presumably that of a receptionist or dental nurse:

'Explained about [the Practice's moving out of the NHS]. [Ms C] said will be going to another Dentist. left on [Practice Manager]'s Desk to be taken off Database'.

15. I asked the Practice to provide the original version of the dental records (they had previously provided a photocopy). The original version showed no evidence of falsifying the records or adding the above entry later, for example after the complaint had been made.

16. Turning to the complaint about alleged resistance to payment, I note that the Practice Manager's reply to the complaint said, 'When discussion arose about payment for this treatment it became clear that you were resistant to paying ...'. This upset Ms C, who considered she had been asking a reasonable question about the reason for a charge, not resisting payment.

17. When Ms C disputed the Practice Manager's complaint response, he wrote to her again, saying, amongst other things,

'[Dentist 2] accepts that this was indeed an unfortunate incident and he would once again express his regret that the incident occurred but equally he feels that the matter may be best concluded if both parties

tendered an apology for their perceived behaviour'.

No explanation was given about the reasons why Ms C would be apologising.

18. Moving to the remaining part of complaint (b), I note that Ms C wrote to the Practice Manager, asking for their complaints procedure as she wanted some guidance regarding a complaint which she intended to make. The reply merely asked for details of her complaint. Ms C then made a formal complaint, referring to this and asking whether that meant they did not have a complaints procedure. Neither the Practice's written acknowledgement of that letter nor their complaint reply referred to the subject. Dentist 2 later told me that in the unusual event of a complaint, it was Practice policy to copy their complaints procedure to complainants, regardless of whether it was requested, and that the Practice Manager believed that he had enclosed a copy of the procedure with the reply to the complaint but accepted that there could have been an oversight. For the sake of completeness, I obtained a copy myself and sent it to Ms C for her information. (Although not part of the complaint, I can also confirm that the Practice's complaints procedure was (as is required) in line with the NHS complaints procedure.)

## **Conclusions**

*(a) Complaint that the dentist spoke to Ms C in an aggressive, bullying way, within the hearing of Practice staff and other patients*

19. I have thought carefully about the conversation in Reception and its effect on Ms C. For example, I considered whether objective evidence about Dentist 2's manner could be provided by interviewing members of his staff. I decided, on balance, that staff loyalties could, in theory, produce subjective accounts, rather than objective evidence. In the absence of robust evidence, the practice of this office is to try to reach a decision which is based on a balance of probability. On this basis, therefore, I have concluded that in my opinion, what probably happened was: that Dentist 2 was taken aback by the prospect that Ms C might be leading up to a refusal to pay; that as the owner of the business he had experience of having to write off similar debts, at a cost to himself; and that he wished to ensure by a firm manner that Ms C understood clearly that payment was expected. I consider that to be acceptable. Although perhaps not ideal, I see no particular fault in the presence of other members of staff during that conversation. (Because of the lack of independent evidence I make no comment about whether members of the public could overhear.) I therefore do not uphold complaint (a).

*(b) Complaint that the Practice's handling of Ms C's complaint made the situation worse by avoiding the issues, making factual inaccuracies, giving the impression that she had resisted payment and asking her to apologise; and that they ignored her requests for a copy of their complaints procedure*

20. It is clear to me that the Practice Manager's complaint response did not avoid the issues in Ms C's letter of complaint (apart from the query about complaints procedures, which I cover below). I have no reason to believe that the dental records for 22 December 2004 had been falsified by recording at a later date that Ms C said she would be moving to another practice. Additionally, even if there had been some misunderstanding about that conversation, I am satisfied that Dentist 2 would have had no reason to doubt the statement when he saw Ms C for the first time in January 2005 and read that entry in her records. I am satisfied, therefore, that his comments in the Practice Manager's complaint response in relation to this would have been made entirely in good faith and that, therefore, the Practice Manager's reply was not knowingly inaccurate.

21. Ms C also said that the complaint replies gave the impression that she had been trying to resist payment. As explained at paragraph 19, I would imagine that any hint from a customer that a charge had come as a surprise would be likely to prompt the owner of a business to consider the possibility that the payment was going to be opposed. One of the dictionary definitions of 'to resist' is 'to offer opposition'. I have no reason to believe that Ms C was trying to avoid paying and I do not suggest that she was doing so. But I do not consider that the word 'resist' was used inappropriately because I feel that to Dentist 2, it probably felt as though Ms C was 'offering opposition' or was going to do so.

22. So far, I have considered the Practice's handling of Ms C's complaint to have been appropriate and in line with the NHS complaints procedures. But I consider that the Practice Manager should have advised Dentist 2 that it would be inappropriate (in their second complaint reply) to pass on Dentist 2's suggestion that Ms C should apologise. Ms C's complaint was about Dentist 2's behaviour. The complaint response should, therefore, have focused only on that and on trying to resolve the complaint. To raise the subject (whether accurately or not) of Ms C's own behaviour was not appropriate and, in my opinion, was virtually guaranteed to make matters worse, rather than resolve them. As Ms C did, indeed, complain that the Practice's complaint handling had made the situation worse, I therefore uphold this aspect of complaint (b).

23. Turning finally to the last aspect of complaint (b) (in other words, whether the Practice ignored Ms C's requests for a copy of their complaints procedure), the content of the Practice Manager's letters strongly demonstrates to me that Ms C's two requests for the complaints procedure were ignored. Additionally, I note that the Practice Manager felt he had enclosed it with the Practice's reply to the complaint. In my view that would have been too late because Ms C's first request clearly stated that she wanted to see it before making any complaint. I, therefore, uphold this aspect of complaint (b). I should add that in any case, the value in sending the complaints procedure to a complainant lies in doing so at the start of the process (so that the complainant knows what to do and what to expect), rather than at the end.

24. To summarise my conclusions for complaint (b), I have not upheld the complaints that the Practice avoided the issues in the complaint, made factual inaccuracies or inappropriately used the word 'resist' in describing Ms C's questioning of the charge. But I have upheld the complaints that it was inappropriate to ask her to apologise and that the Practice ignored her requests for a copy of their complaints procedure. Therefore complaint (b) is partially upheld.

### **Recommendations**

25. The Ombudsman recommends that the Practice acknowledge in writing to the Ombudsman that asking Ms C to apologise was not a helpful way to try to resolve her complaint. She also recommends that in future the Practice send complainants a copy of their complaints procedure when a complaint is first made, rather than with their reply to the complaint, and that they confirm to her that they will do so.

30 May 2006

**Explanation of abbreviations used**

Ms C	The complainant
Dentist 1	The dentist who treated Ms C before leaving the Practice
Dentist 2	The dentist who was the subject of the complaints by Ms C