

**Case 200501751: Lanarkshire NHS Board**

**Summary of Investigation**

***Category***

Health: Hospitals, communication

***Overview***

The complainant raised concerns about alleged offensive remarks of a sexual nature by a student nurse and about the Health Board's handling of her complaint about them.

***Specific complaints and conclusions***

- (a) Remarks by a nurse (*no conclusion*)
- (b) Complaint handling (*not upheld*)

***Redress and recommendation***

The Ombudsman has no recommendation to make.

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**Introduction**

1. I shall refer to the complainant as Mrs C. Annex 1 is a reminder of this, and other, terms used.
2. On 3 October 2005 the Ombudsman received Mrs C's complaint that a student nurse made offensive remarks of a sexual nature to her when she was a patient in one of the hospitals of the Lanarkshire NHS Board's Acute Services Division (the Division) in June 2005 and that there were faults in the Division's handling of her complaint about those remarks.
3. The complaints from Mrs C which I have investigated are that:
  - (a) a nurse made unacceptable remarks;
  - (b) the Division's handling of the complaint was poor.

## **Investigation**

4. I examined the Division's file of Mrs C's complaint to them, papers sent by Lanarkshire NHS Board (the Board) in response to my enquiries, the hospital's clinical records for Mrs C's admission and the papers provided by Mrs C. I also examined the NHS Complaints Procedure. I obtained comments from the student nurse (the Nurse) who was alleged to have made the remarks and from Mrs C's friend, who was present at the time of the alleged remarks.

5. To identify any gaps and discrepancies in the evidence, the content of some of the papers was checked against information elsewhere on file. 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 what someone said. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Both Mrs C and the Board have had the opportunity to comment on a draft of this report.

### **(a) A nurse made unacceptable remarks**

6. Mrs C's account to the Division was that she was admitted to the hospital in question to have an operation on a nerve in her arm the next day. She felt unwell on the morning of the operation because of her anxiety about the operation and because of the difficult behaviour of a patient in another room the previous evening. However, she tried to relax because a doctor told her she might be unable to have the operation if she did not improve by the afternoon. Therefore, she joined in the general laughter on the ward between the patients and the Nurse. At 11:00 she was given a pre-med (which is a pre-operation medicine, given as a first stage in the anaesthetising of a patient for surgery). She relaxed so much that she fell asleep, being woken by her friend on her arrival to visit Mrs C. At that point the Nurse came back into the ward. He told Mrs C that he had known her about 12 years before, supporting this by mentioning some details about her family, and trying to refresh her memory as she said she did not remember him.

7. Mrs C continued her account by saying that the Nurse then walked to her bed-side and shouted, for all to hear, that she was still ugly. Mrs C was so taken aback that she swore at him, at which he raised his hand towards a patient at the other side of the ward and said, 'Excuse me, ladies, for my language but she was shagged. Yes, she was shagged behind the bins'. ('Shagging' is slang for sexual

intercourse.) Mrs C joined in the resulting general laughter to hide her deep humiliation. When her friend said that Mrs C was not like that and that he must be confusing her with someone else, he said his shift ended at 14:00, when he might or might not return to put her out of her misery about the scenario to which he was referring. (He did not return.) On the way out, another nurse appeared and, because of the noise level, asked what was happening. The Nurse replied, 'get me out of this conversation' and left the ward. Mrs C was so distressed that within the next ten minutes she vomited. (The nursing records confirm that Mrs C vomited at 12:15.) Her operation was cancelled, although the surgeon told her that she would not have to go back on the waiting list but would be given the next available operation space.

8. The Division's account, in their response to Mrs C's complaint, was that an investigation had been conducted involving the Nurse's college, the Division's personnel department and the hospital. They reported that other patients said that the Nurse said nothing inappropriate and that Mrs C and her friend had been laughing and joking with him. The Division's conclusion was that they were unable to prove the allegations. They offered Mrs C a meeting to talk through her concerns, and offered surgery in a different ward if she wished.

9. From papers provided to me for the investigation, I note that Mrs C's complaint was taken seriously enough for the Nurse to be suspended for two weeks while the allegations were investigated. He was then re-instated because of the lack of evidence against him. I also note that they described Mrs C's ward as a fully-occupied four-bed room. The Division said that a ward sister spoke to two of the other three patients, both of whom said that they felt it was the behaviour of Mrs C and her friend which was inappropriate (but would not explain what they meant by this). The Division also said that the third patient was too ill to speak to. Another sister said she spoke to one of those patients again and was told that at no time did the Nurse say anything inappropriate.

10. I telephoned Mrs C's friend, who confirmed Mrs C's account and the Division's description of them both as having been joining in the general ward laughter with the Nurse before the alleged remarks, although her own recollection was that one of the four beds was empty at the time.

11. In addition to examining previous comments from the Nurse, I also put further written enquiries to him. His recollection was that all three of the other beds were occupied at the time of the alleged remarks. He confirmed Mrs C's account that he was in and out of the ward, that he chatted to Mrs C, and that there was a lively atmosphere of conversation and laughter amongst the patients and between them and himself. He confirmed that Mrs C's friend arrived and contributed to this atmosphere. He said that he told Mrs C that he thought he knew her from the past and that when her friend arrived, she, too, joined in the debate about where Mrs C and the Nurse could have met before. The examples given (for example, that they could have met at a nightclub or that he could have been a past boyfriend) prompted more amusement amongst the other patients. The Nurse said that he made no inappropriate remarks and that, on leaving the room to see to other duties, the patients in general complimented him on his manner. The Nurse added that his college were satisfied with the Board's investigation of Mrs C's allegations, immediately lifted his suspension and awarded him five days' compassionate leave from the college. He sent me a copy of a letter from the college as evidence of this last point.

*(a) Conclusion*

12. I am absolutely clear that the remarks Mrs C described are completely unacceptable. (And whether such remarks, if made, were true or not is irrelevant.) However, where a complaint involves one person's word against another's, it is always difficult, if not impossible, to reach a conclusion about what happened. In trying to reach a conclusion on a complaint, it is the practice of this office for a complaints investigator to seek information which seems likely to provide evidence about what happened. But if there is not enough evidence to prove what happened, the office's practice is to try to reach a decision which is based on a balance of probability. Where that is not possible, no conclusion can be made. I have had to take this last option, although I am aware that this may be an unsatisfactory outcome for Mrs C or the Nurse. I explain my reasons below.

13. In thinking about the evidence, I note that, on the one hand, we have Mrs C and her friend, who are both very clear that the Nurse made the alleged remarks. The nursing records confirm that Mrs C vomited, which Mrs C said was caused by her distress about the incident. On the other hand, there are accounts of light-hearted remarks by Mrs C and her friend to the Nurse and of a patient's

recollection that the Nurse did not say anything inappropriate. Other patients do not appear to have noticed anything wrong. However, that in itself is not evidence that the remarks were not made, because the general atmosphere of conversation and laughter could have meant that they did not hear the remarks or that they felt they were just part of the general good humoured remarks that were being made. Finally, we have the Nurse's denial of the remarks. In thinking about the evidence, I have also had to consider carefully how independent the account of Mrs C's friend is likely to be. Further, I have had to take into account whether there is any relevance in the fact that, at the time of the alleged remarks, Mrs C had already been feeling anxious, to the extent that doctors were thinking of postponing her operation. Despite this careful consideration, I have to say that I simply cannot reach a firm conclusion on complaint (a).

**(b) The Division's handling of the complaint was poor**

14. Mrs C complained that the Division did not interview her friend, despite her hearing the alleged remarks, and that they failed to tell her that if she remained dissatisfied after complaining to them, she could complain to the Ombudsman. In her complaint to the Ombudsman Mrs C said that when she asked, the Division told her that it would be unusual for them to interview a complainant's friend. I note that the NHS Complaints Procedure does not mention whether witnesses should be interviewed. Clearly, therefore, this is left to the discretion of the investigating staff. I also note that they did obtain comments from two patients and did speak to various members of the nursing staff to try to find out what happened.

15. On 18 July 2005 the Division acknowledged receipt of Mrs C's complaint, saying, amongst other things, that if she remained unhappy at the end of the complaints process, she might wish to take her complaint to the Ombudsman. In her complaint to the Ombudsman Mrs C mentioned having received that letter.

*(b) Conclusion*

16. It is clear to me that the Division and the Nurse's college took Mrs C's allegations seriously by suspending the Nurse and asking staff and patients for comments. I consider that it was reasonable for the Division not to interview Mrs C's friend because it could reasonably be assumed (whether correctly or not) that her account would simply support Mrs C's account and so could not be used as firm evidence to show what happened. And, in not interviewing Mrs C's friend,

the Division were not acting outside the NHS Complaints Procedure. I turn now to the complaint that Mrs C was not told about the Ombudsman. I have seen the Board's letter of 18 July 2005 to Mrs C, which told her that the next stage in the complaints process was the Ombudsman. As Mrs C mentioned the content of that letter, it is clear that she received it and that, therefore, she was told that she could complain to the Ombudsman. In all the circumstances, I do not uphold complaint (b).

## **Summary**

### **Specific complaints and conclusions**

- (a) Remarks by a nurse (*no conclusion*)
- (b) Complaint handling (*not upheld*)

### **Redress and recommendation**

The Ombudsman has no recommendation to make.

25 July 2006

**Explanation of abbreviations used**

Mrs C	The complainant
The Board	Lanarkshire NHS Board
The Division	The Health Board's Acute Services Division
The hospital	One of the Division's hospitals
The Nurse	The student nurse who allegedly made the remarks in question