

## Scottish Parliament Region: North East Scotland

Case 200501135: Tayside NHS Board

### Summary of Investigation

#### **Category**

Health: Counselling Service

#### **Overview**

The complainant raised concerns about his session with a counsellor, including an alleged breach of confidentiality, the counsellor's attitude and the lack of information given to him about the counselling. He also complained about the handling of his complaint.

#### **Specific complaints and conclusions**

The complaints which have been investigated are:

- (a) breach of confidentiality (*not upheld*);
- (b) racism (*not upheld*);
- (c) other aspects of the session (*not upheld*); and
- (d) complaint handling (*upheld*).

#### **Redress and recommendation**

The Ombudsman has no recommendation to make.

## **Main Investigation Report**

### **Introduction**

1. On 27 July 2005 the Ombudsman received a complaint from a man (referred to in this report as Mr C) about unprofessional behaviour during a session in November 2003 by a counsellor (referred to as the Counsellor) of Tayside NHS Board's Primary Care Division.

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

- (a) breach of confidentiality;
- (b) racism;
- (c) other aspects of the session; and
- (d) complaint handling.

### **Investigation**

3. I was assisted in the investigation by one of the Ombudsman's clinical advisers, a mental health nurse (the Adviser). Her role was to explain, and give an opinion on, the clinical aspects of the events, for example the standards which the Counsellor would have been expected to meet. We examined the papers provided by Mr C, the Board's complaint file and the relevant clinical records. We also examined the Board's detailed response to my written enquiries. To identify any gaps and discrepancies in the evidence, the content of some of these papers was checked against information elsewhere on the files 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 robustly. 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. Finally, I should explain that the practice of this office is not to uphold a complaint where the organisation which is the subject of the complaint has already taken action, which we consider to be satisfactory, before our involvement.

4. 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.

## **Background**

5. Mr C's complaints concerned his one session on 25 November 2003 with the Counsellor, and the Board's handling of his complaint about it. In their complaint response of April 2004, the Board explained to Mr C that in November 2003, counselling services in the area transferred from the employment of GPs to the responsibility and accountability of the Board. This was, therefore, a new service for the Board. They explained to Mr C (the detail of which I need not repeat) how this complaint would be a learning opportunity in building the service, the value which they placed on the service, the monitoring of standards which the service would carry out and the better opportunities which the new service would provide for the supervision, training and development of the counsellors. They also said that the new service would enable couples to see separate counsellors, which would avoid breaches of confidentiality of the type described by Mr C.

### **(a) Breach of confidentiality**

6. At the session of 25 November 2003, the Counsellor referred to being consulted also by Mr C's domestic partner and to her emotional state. Mr C considered this to breach her confidentiality. In their complaint response of April 2004, the Board simply said that the Counsellor regretted Mr C's views and had reflected on them. I told the Board that, if Mr C's account was accurate and if the Counsellor had not obtained prior agreement from the parties to making references about Mr C's partner, there was a breach of the confidentiality of the partner, which was not in accordance with professional standards. In their response to my enquiries, the Board said that the Counsellor believed that he had assured Mr C about confidentiality and that, as far as he could recall, he felt (when reflecting to Mr C on the emotional state of his partner) that it was a reflection which he drew from Mr C's own account, rather than a sharing of detail drawn from the partner's session. The Board have said that if Mr C's account was accurate, they would consider confidentiality to have been breached. They say that the Counsellor has learnt from the experience and that they have produced guidance and will introduce a standard to avoid potential breaches of confidentiality arising in the future.

### **(a) Conclusion**

7. Whether confidentiality was breached cannot be proved. However, I am satisfied that the Board have taken seriously the complaint about confidentiality

and have taken action to prevent such a scenario in the future even though they could not be certain that a breach of confidentiality had occurred in this case. Therefore, I do not uphold the complaint.

**(b) Racism**

8. In Mr C's letter of November 2003 to the Counsellor (expressing his dissatisfaction with the session of the previous day), he said that the Counsellor had referred to Freud, the noted psychoanalyst, as a neurotic Viennese Jew. Mr C suggested in his letter that this could be seen as anti-Semitic. The Counsellor did not reply to that letter, although the Board said that, following Mr C's concern, the Counsellor now acknowledged that he should have dealt with it. The Board's response to Mr C regarding the complaint did not refer to the issue at all. When Mr C requested an Independent Review by a convener of the Board's Independent Review service, he said that this omission made him feel that the Board might have no anti-racist training programme. The convener referred this last point back to the Board, to answer directly to Mr C. The Board's response to that was simply to send Mr C an action plan which, amongst other things, said it had been agreed that all counselling staff should be made aware of their racism-related policies.

9. In their reply to my enquiries, the Board said that the Counsellor was clear that he had not described Freud as neurotic and apologised if anything he had said had been interpreted as anti-Semitic. The Board added that they viewed racism as unacceptable and that this complaint had highlighted the need to be aware of the ease with which offence could unintentionally be given.

*(b) Conclusion*

10. I note the conflicting accounts about what the Counsellor said. As it is not possible to establish the facts, I have to say that there is no evidence of racism by the Counsellor. However, there is evidence of the Board's stand: I have seen their race equality scheme document and I am satisfied that they take the issue seriously. Therefore, I do not uphold this complaint.

**(c) Other aspects of the session**

11. Mr C complained that the Counsellor often interrupted him in the session of 25 November 2003 and, therefore, formed a view which was based on incomplete information from Mr C. The Board did not address this in their response to Mr C.

12. In their reply to my enquiries, the Board said that, in line with most types of counselling, Mr C's reasonable expectation would have been that he could discuss freely and at length the issues which he felt were relevant. However, they said that the referral letter from Mr C's GP had been unclear about Mr C's possible needs, and so the Counsellor had been trying to establish these so that he could assess Mr C; the Counsellor had, therefore, been trying to focus Mr C, rather than let him speak freely. It follows, therefore, that there is no evidence that the Counsellor's view was based on incomplete information. Because it was important for the Counsellor to assess whether he could help Mr C (and, if so, by what type of therapy), the Board had not considered that the interruptions were inappropriate. But the Board did conclude that Mr C's experience highlighted the need for: greater clarity in referrals from GPs; clearer thinking about who might be suitable for what types of counselling; and greater clarity for patients about the service. The Board added that these issues would be addressed by a Lead Clinician, a psychologist whose appointment would be part of the building of the new service (see paragraph 5). I should add that Mr C and the Counsellor do not agree about what was said during the session about cognitive behaviour therapy (CBT). For example, the Counsellor felt, as far as he could recall, that he had pointed towards some CBT certification on his wall, which Mr C disputes. I have not been able to establish the facts about what was or was not said about CBT and, therefore, make no further mention of this.

13. The Adviser said she would also expect a therapist to give information to a patient about their therapy and how it would be used to try to help them. Mr C complained that he was given no such information. The Board have told me that they absolutely agree that Mr C should have received information before the session about what to expect from it. They told me they had since produced an information leaflet about their counselling services.

14. Finally, the Adviser said that she would have expected the Counsellor to have been receiving some sort of supervision. When I asked the Board what the position had been in this case, they said that, although there were governance arrangements in place, they had realised that these could be strengthened. The new post (see paragraph 12) would address this because it would be the Lead Clinician's responsibility to ensure that a system was in place for professional

supervision and appraisal. The Lead Clinician would, in turn, be accountable to the Board's Head of Psychology Services. The Board told me that all this would be a major support for their counsellors because (see paragraph 5) previously they had worked alone in general practitioner practices.

*(c) Conclusion*

15. Mr C's complaint about the Counsellor's interruptions during the session ties in with his complaint about not having been given advance information about the session (see paragraphs 11 and 13). In other words, if he had had such information, he would have known what to expect and would have been likely to understand that, by his interruptions, the Counsellor was trying to obtain information to enable him to assess what, if any, therapy option might be suitable. The Adviser accepts the Board's comments about the interruptions and the action which the Board had been taking to provide appropriate information for other patients as a result of this complaint. Therefore, I do not uphold this complaint.

**(d) The Board's complaint handling**

16. Mr C considered that the Board did not address all the issues in his complaint. For example, in his letter to the Board in January 2004, he asked for details of the Counsellor's confidentiality responsibilities; however, the Board's complaint response of April 2004 simply said that the Counsellor regretted Mr C's views and had reflected on them. The Board gave no opinion about whether the alleged remarks about Mr C's partner were acceptable. In his January 2004 letter, Mr C also asked whether his experiences met the appropriate standards under which the Counsellor worked. However, the Board's April 2004 response simply gave the Counsellor's qualifications and said he was highly valued. Also, the Board's April 2004 response did not cover the points about Freud, interruptions or lack of information. They did go into detail about the new service (see paragraph 5) but gave no opinion about whether Mr C's experiences were acceptable.

17. When Mr C requested an Independent Review of his complaint, the convener told him she did not consider that full answers had been given to Mr C. Together with the new issue of anti-racist training (see paragraph 8), she properly referred the complaint back to the Board. In response, the Board sent Mr C a detailed action plan for the new service but still did not fully answer all Mr C's points. Finally, Mr C had never had a response to his complaint that the Counsellor had not

replied to his original letter of dissatisfaction.

18. In their response to my enquiries, the Board gave me the answers which I have described throughout the report. Additionally, they said that they fully accepted that the Counsellor should have replied to Mr C's letter of November 2003 (see paragraph 8). They added that the Counsellor also accepted it, that he understood that his lack of response had not been in line with the NHS Complaints Procedure and that he realised that if he had replied, Mr C's concerns might have been resolved. The Board also accepted that Mr C should have been told about the NHS Complaints Procedure, as was the practice in other Tayside NHS Board services.

19. Finally, the Board also explained to me that, when the Independent Review convener referred the complaint back to them, their complaint-handling service was changing from separate Division services to a joint complaints service for the whole Board. The challenges of that re-organisation were largely responsible for their responding to the convener's request simply by sending an action plan and for the delay in responding. They fully acknowledged that this fell below the complaint handling standard which they would expect from themselves. In particular, they asked me to convey sincere apologies for this to Mr C, and I do so by way of this report.

*(d) Conclusion*

20. There is no doubt the Board's complaint handling did not address all the issues, either at the first stage or when the convener referred it back. Therefore, I uphold this complaint. The Board have apologised, explained the reasons, provided more information (as described throughout the report) and assured me that they would not normally expect to handle a complaint this way. I accept this. Therefore, the Ombudsman has decided to make no recommendations for any further action by the Board.

26 September 2006

**Explanation of terms used**

Mr C	The complainant
The Board	Tayside NHS Board
The Counsellor	The counsellor who provided the session in November 2003
CBT	Cognitive behaviour therapy
The Adviser	Clinical adviser to the Ombudsman