Scottish Parliament Region: Lothian

Case 200500918: Lothian NHS Board

Summary of Investigation

Category

Health: Clinical treatment/Diagnosis

Overview

The complainant (Ms C) raised concerns about the care and treatment that she received from her GP (GP 1) and a consultant psychiatrist (Consultant 1). Ms C claimed that, following their misdiagnosis of her, her daughter (Miss C) was placed in foster care.

Specific Complaints and Conclusions

The complaints which have been investigated are that:

(a) GP 1 and Consultant 1 came to their own conclusions about Ms C's mental health without checking whether her account was accurate *(not upheld)*;

(b) GP 1 and Consultant 1 did not have any evidence on which to recommend that Ms C should be detained for medical treatment *(not upheld)*; and

(c) as a result of the incorrect and misleading medical assessments of Ms C, her daughter was taken away from her and put into foster care *(not upheld)*.

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 30 June 2005 the Ombudsman received a complaint from Ms C about the care and treatment that she received from GP 1 and Consultant 1, an employee of NHS Lothian (the Board), Primary and Community Division.

2. Ms C lived with her daughter, Miss C, who was five years old at the time of the events complained about. Ms C had a long history of drug abuse, and was on a prescription of methadone. She supplemented this prescription with amphetamine, and used cannabis on a daily basis. Around the beginning of 2003, Ms C became worried about the mould and fungus that she believed to have infested her flat. GP 1 became increasingly concerned about her mental state, which he believed to be caused by her recent dependence on amphetamines. In his opinion, her obsession with her home environment was the result of her deteriorating mental health. GP 1 referred her to Consultant 1 for assessment. Subsequently an application was made under section 18 of the Mental Health (Scotland) Act 1984 (the Act) for Ms C to be detained in hospital to obtain medical treatment, which was supported by the medical recommendations by GP 1 and Consultant 1.

3. Around the same time, a Child Protection Order was granted in respect to Miss C. Further, the outcome of a Children's Hearing was that Miss C was placed in supervised care. GP 1's and Consultant 1's evidence was submitted to the courts in respect to Ms C's medical condition.

4. The complaints from Ms C which I have investigated are that:

(a) GP 1 and Consultant 1 came to their own conclusions about Ms C's mental state without checking whether her account was accurate;

(b) GP 1 and Consultant 1 did not have any evidence on which to recommend that Ms C should be detained for medical treatment; and

(c) as a result of the incorrect and misleading medical assessments of Ms C, her daughter was taken away from her and put into foster care.

Investigation

5. The investigation of this complaint involved reading all the documentation supplied by Ms C, Ms C's relevant medical records and the complaint files. I obtained the views of two professional advisers, one with specialist knowledge of general practice (Adviser 1), and another with specialist knowledge of psychiatry (Adviser 2). I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Board have had the opportunity to comment on a draft of this report.

(a) GP 1 and Consultant 1 came to their own conclusions about Ms C's mental state without bothering to check whether her account was accurate

(b) GP1 and Consultant 1 did not have any evidence on which to recommend that Ms C should be detained for medical treatment;

(c) As a result of the incorrect and misleading medical assessments of Ms C, her daughter was taken away from her and put into foster care

6. Ms C had a long history of drug abuse starting when she was 17, and had regularly used heroin, amphetamine, cannabis, methadone and LSD in the past. In the years leading up to the events concerning her complaint, she continued to have a methadone problem but had been maintained on a dose of 20mls daily. However, she developed an additional amphetamine problem to the extent that she found it increasingly difficult to carry out her normal daily activities.

7. In an effort to assist Ms C, GP 1 referred her to a local Community Drug Problem Service in December 2000 and May 2002. The records I have examined showed that of the three appointments that were made for her in early 2003, Ms C cancelled one, failed to attend another, and arrived too late to be seen on the last. The Community Drug Problem Service did not consider that she was particularly motivated to address her problematic drug use, and discharged her.

8. A Senior Housing Officer from the City of Edinburgh Council visited Ms C's flat on 21 March 2003. His survey concluded that Ms C was experiencing housing problems related to condensation dampness, and that there was evidence of mould on the single glazed window frames in the bedrooms. As a result of this and a number of other points Ms C brought to his attention, he arranged for contractors to carry out a number of remedial jobs in her flat on 31 March 2003.

9. GP 1 was concerned about Ms C's accounts of her flat being infested with mould and fungus, although Ms C did not consider that GP 1 was taking her concerns seriously because he attributed her anxieties to her amphetamine use. She disagreed with this diagnosis. GP 1 referred Ms C to Consultant 1, and in his referral note of April 2003, GP 1 stated 'This patient has asked to be seen by you to confirm that she is not mentally ill.' Ms C did not keep the appointment arranged with Consultant 1, but remained in contact with GP 1. GP 1's concerns about her continued, and he arranged for Consultant 1 to visit Ms C at her home on 12 August 2003.

10. Consultant 1 wrote a letter to GP 1, dated 13 August 2003, in which he gave his assessment of Ms C:

> 'I am writing to confirm I thought that [Ms C] was suffering from a psychotic illness, probably related to years of amphetamine abuse and that we needed to consider detention in order to bring her into care. Further I thought that she needed detention in terms of her health but also as a means of protecting the welfare of her child [Miss C]. She admitted during the interview that she has hit the child on occasion out of frustration. It did not seem to me that this was directly related to her psychotic thinking but I think that she is under an enormous amount of stress in relation to her delusions but also being a single parent.
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> … She showed me her evidence of fungal infection which I could not agree was such. She told me that you had called in the Environmental Health Agency who had also said that in their expert view there was no fungal problem. I do understand, however, there is a degree of dampness. One of her bits of evidence was clearly a gravy stain on the wall and others specks of paint. She refuted strongly that this was the case.
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> … Her speech was pressured and initially she carried on her activities without stopping when we entered the room. She admitted to being on speed and said that she took it daily and had done so virtually from the age of 17. She admitted to being dependent on it. She seemed to realise that it would be difficult for her to stop. She was deluded and pre-occupied in relation to spores and fungi infesting various parts of the house. She seemed to see these as being contaminatory. I could not discern that she was hallucinated.

There did not appear to be any cognitive deficit.'

11. Consultant 1 concluded that she required further assessment and that her health would be at risk without this, and that the health and welfare of her child would also be at risk.

12. GP 1 and Consultant 1 discussed Ms C's case with two Mental Health Officers from the City of Edinburgh Social Services Department. It was decided that one of the Council's Mental Health Officers would make an application for Ms C to be admitted to hospital under section 18 of the Act, which would be supported by GP 1 and Consultant 1's medical recommendations.

13. GP 1 wrote in his medical recommendation dated 15 August 2003 that:

'The patient has developed a fixed delusional view about the environmental dangers of her home, in particular damp/fungal infection. Her fears are obsessive and she is unable to discuss them rationally and so obtrusive that they impact on her self-care and the care of [Miss C].'

14. GP 1 also confirmed that he was of the opinion that it was necessary for the patient's health or safety or for the protection of other persons that Ms C should receive treatment in hospital and that it could not be provided unless she was detained. The basis for his opinion was that:

'Because of the severity of her symptoms she is under considerable strain and has hit her daughter and expressed a fear that she may repeat this. She is also using street drugs which may be causing/exacerbating her symptoms. She lacks insight into the dangers of this action and is unwilling to stop. Attempts to manage these problems in the community over many months have been ineffective and the situation has deteriorated.'

15. An application was made under the Act for Ms C to be admitted to hospital, supported by the medical recommendations of GP 1 and Consultant 1. Ms C opposed this, and the case was set down for hearing at Edinburgh Sheriff Court on 26 August 2003. There was a continuation of the hearing until 17 September 2003.

16. Ms C's solicitor arranged for a second opinion on Ms C's mental state to be carried out by an independent consultant psychiatrist, Consultant 2. Ms C attended an appointment with Consultant 2 on 25 August 2003. Consultant 2 wrote a report dated 25 August 2003, in which he recorded that she had told him that flakes of brown material, like grass, were continually falling on the kitchen floor and the same thing was happening in the bedroom. Consultant 2 recorded that Ms C found her daughter was unamenable to reason, and was becoming increasingly hyperactive and she eventually had to strike her usually once a day in an effort to quieten her down. The following is how Consultant 2 set out his diagnosis in his letter to Ms C's solicitor:

> 'Amphetamine psychosis on a background of long standing substance abuse presently habituated to cannabis and amphetamine and on maintenance methadone with evidence of deterioration in her mental state over the past few months with typical amphetamine hyperarousal and now involving delusional ideas of fungal infestation and problems with condensation and damp which are severely restricting her own and her daughter's life comorbid with major depression.
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> This lady is considerably psychiatrically disabled with her multiple substance abuse particularly amphetamine. She has been stabilised on Methadone for many years and in my opinion it is her continuing use of amphetamine that is the principal problem in that without it she is not able to function but it is now causing significant problems for her including hyperarousal which makes her increasingly alarmed as she becomes preoccupied with various problems in her home environment … In my opinion to wean her off amphetamine will require treatment in hospital. Given her opposition to this and to prevent further deterioration in her mental state I support the application for detention under terms of Section 18 as in my opinion she is presently a risk to herself and her daughter.'

17. An independent firm of architects assessed Ms C's flat on 11 September 2003 at the request of a national housing support service, and issued a report on 12 September 2003. They confirmed that they had observed mould in the living room, kitchen, bathroom and one of the bedrooms, and also on the furniture.

18. Consultant 2 reassessed Ms C again on 15 September 2003, after she claimed that she was no longer taking amphetamines, and after the architect had confirmed the presence of condensation, mould and mildew in her flat. In Consultant 2's opinion, he considered she showed some evidence of improvement in her mental state. He noted that she was no longer sleeping in her flat, and that her daughter had been taken into care. He concluded that as a result of the improvement in Ms C's mental state she was less of a risk to herself and as her daughter was in care, that Ms C was now of no risk to her. As a result of his findings, he concluded that he supported her opposition to the application for detention.

19. At the hearing on 17 September 2003, the application to detain Ms C for medical treatment was withdrawn.

20. Before Ms C approached the Ombudsman, she had taken her complaints through the NHS local resolution procedures. She wrote to GP 1 on 24 May 2004 setting out her complaints about him in full. After the intervention of a complaints adviser from the Board, GP 1 replied on 20 July 2004. He did not agree with her assertion that he had not taken her concerns about the conditions in her flat seriously, and reminded her that he had referred the problem to the Environmental Health Service, and had spoken to them on more than one occasion. He also offered to meet with her to discuss any outstanding concerns. She declined this offer. A meeting was arranged on 24 November 2004 between Ms C and Consultant 1 to give her the opportunity to discuss all her concerns about the care and treatment he had given her. She remained dissatisfied with the responses that she was provided with and referred her complaints to the Ombudsman on 30 June 2005.

(a) Conclusion

21. I consider that GP 1 had taken Ms C's concerns seriously and had contacted the Council, on Ms C's behalf, to request that they inspect the condition of her flat. When GP 1 and Consultant 1 visited Ms C at her flat on 12 August 2003, they both had the opportunity to assess the conditions in her flat themselves. Consultant 1 wrote in his report dated 13 August 2003 that he considered the evidence of infestation that Ms C showed him to be gravy stains and paint specks.

22. Adviser 1 reviewed Ms C's medical records and advised me that, in his opinion, GP 1 and Consultant 1 had not based their diagnosis of Ms C's mental state on whether or not there was mould, damp and fungus in Ms C's property as she claimed, but on the intensity and persistence of Ms C's beliefs about her surroundings; these were highly abnormal and in the realm of mental health illness.

23. In the opinion of Adviser 2, the medical records show that GP 1 and Consultant 1 took into account Ms C's clinical picture, identified such features as heightened arousal, pressure of speech, and the duration of symptoms amongst other matters, before they made their diagnosis.

24. Adviser 2 considered that from the details set out in Ms C's records, it was reasonable for GP 1 and Consultant 1 to conclude that Ms C was delusional and psychotic. He did not consider that an expert report, such as that provided by the architect's report dated 13 September 2003 which supported some of Ms C's claims about the condition of her flat, would have changed their diagnosis.

25. I accept the Advisers' opinions and find that it was reasonable for GP 1 and Consultant 1 to reach the diagnosis they did on the basis of the information that was available to them, and, therefore, I do not uphold this complaint.

(b) Conclusion

26. To support an application for Ms C to be detained for medical treatment under section 18 of the Act, GP 1 and Consultant 1 had to consider that it was necessary for Ms C's health and safety, or for the protection of other persons, that she should receive medical treatment in a hospital. They also had to believe that the medical treatment could not be provided unless she was detained under the Act.

27. Adviser 2 reviewed all the relevant records and advised it was clear that GP 1 had an extensive knowledge of Ms C, and had seen her health deteriorate over a long period of time. GP 1 had referred her to the local Community Drug Problem Service, but Ms C had not attended the appointments made for her. It was apparent that she did not accept that she was ill, and would not accept treatment outside hospital. Adviser 2 commented that Ms C was not reliable at keeping appointments, and there was no reason to suppose that her deterioration would spontaneously go into reverse. As a result of these factors, Adviser 2 concluded

that it was entirely reasonable for GP 1 and Consultant 1 to consider making medical recommendation to support an application to detain Ms C in order for her to receive treatment in hospital.

28. Consultant 2 reached the same conclusion as GP 1 and Consultant 1. It was only after Consultant 2 assessed Ms C on 15 September 2003 (after she had stopped taking amphetamines and was no longer looking after Miss C) that he revised his opinion and supported her opposition to being detained.

29. I would like to make it clear that I am not able to determine whether the criteria of the Act had been met, or whether Ms C should have been detained, as that would have been a matter for the courts to decide. However, I accept the opinion of Adviser 2, and find that there was sufficient evidence for GP 1 and Consultant 1 to recommend that Ms C should be detained to obtain medical treatment in hospital at the time that they did. I, therefore, do not uphold this complaint.

(c) Conclusion

30. Ms C complained that as a result of the:

> 'incompetence, ignorance and lies of GP 1 and Consultant 1, I had my daughter taken away from me and put into foster care.'

31. Ms C held GP 1 and Consultant 1 responsible for her daughter being taken into care. However, it was the City of Edinburgh Council's Social Work Department which made the application for a Child Protection Order for Miss C. The decision to grant this order, and consequently to have Miss C taken into care, was determined by the courts.

32. It would have been up to the courts to determine the accuracy and competence of the evidence of GP 1 and Consultant 1. Ms C, or her representatives, would have had the opportunity at that time to provide the court with evidence to show that GP 1 and Consultant 1's medical assessments were inaccurate or misleading as she claimed.

33. I find that GP 1 and Consultant 1 did not initiate the proceedings to have Miss C taken away from Ms C, and the decision that Miss C should be taken into

foster care was subject to the due process of the law. I, therefore, do not uphold this aspect of her complaint.

19 December 2006

Annex 1

Explanation of abbreviations used

Ms C	The complainant
Miss C	The complainant's daughter
GP 1	The complainant's General Practitioner
Consultant 1	A consultant psychiatrist employed by NHS Lothian
Consultant 2	An independent consultant psychiatrist, arranged by Ms C's solicitor
Adviser 1	General medical adviser to the Ombudsman
Adviser 2	Psychiatric medical adviser to the Ombudsman
The Board	Lothian NHS Board
The Act	The Mental Health (Scotland) Act 1984

Annex 2

List of legislation considered

The Mental Health (Scotland) Act 1984:

Allows people to be detained compulsorily if they have a mental disorder that requires treatment in hospital, either for their health or safety or the protection of others, and they are unwilling or unable to accept this treatment voluntarily. If a psychiatrist wishes to detain a person for longer than 31 days an application must be made to the sheriff court for an order under section 18 of the Act. This allows people to be detained for up to 6 months with the possibility of subsequent renewal.