

**Case 200501186: A Dental Practitioner, Lothian NHS Board**

**Summary of Investigation**

***Category***

Health: Family health services; Dental treatment; Removal from list

***Overview***

The complainant (Mrs C) raised concerns about a dentist (the Dentist)'s examination of her sons' teeth. She also complained that, after raising this with the Dentist, she and her sons were removed from the Dentist's list.

***Specific complaints and conclusions***

The complaints which have been investigated are that the Dentist:

- (a) unreasonably removed Mrs C and her sons from her list (*not upheld*); and
- (b) did not perform an adequate examination of Mrs C's sons' teeth (*not upheld*).

***Redress and recommendations***

Although the complaint is not upheld, the Ombudsman has made a general recommendation. The Ombudsman recommends that the Dentist reviews her procedures for handling removal of patients from her list, and that in future she takes into account the advice in any guidelines that are produced.

The Dentist has accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. In August 2005, a woman (referred to in this report as Mrs C) complained to the Ombudsman that an NHS dentist (the Dentist) had unreasonably removed Mrs C and her three sons from her list. Mrs C felt that this stemmed from the fact that she had raised concerns about the Dentist's examination of her sons' teeth, and she said she also wanted to complain about that examination. Mrs C had raised her concerns through Lothian NHS Board (the Board) but was not satisfied with the response. She was particularly concerned about removal from the list because she felt it would be difficult to register with another NHS dentist locally.

2. The complaints from Mrs C which I have investigated are that the Dentist:
- (a) unreasonably removed Mrs C and her sons from her list; and
  - (b) did not perform an adequate examination of Mrs C's sons' teeth.

### **Investigation**

3. In investigating this complaint I have examined the dental records of Mrs C and her sons, and the correspondence relating to their removal from the Dentist's list. I also interviewed both Mrs C and the Dentist by telephone. I obtained clinical advice on complaint (b) from the Ombudsman's professional dental adviser (the Adviser).

4. The legislation relating to removal from a dentist's list is the National Health Service (General Dental Services) (Scotland) Regulations 1996 SI 1996 No 177 (S14). The relevant section is appended at Annex 2.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Dentist were given an opportunity to comment on a draft of this report.

#### **(a) The Dentist unreasonably removed Mrs C and her sons from her list**

6. Mrs C and her family were registered with the Dentist as NHS patients. In 2005 the Dentist decided that she would in future require all fee-paying adult patients to register with her privately through a dental care plan. She was, however, willing to retain on her list patients who were exempt from NHS charges as long as they completed the relevant declaration that they were fee-exempt. In March 2005 she wrote to existing patients giving three months

notice of this. She explained that they could either remain with her as a private patient or find another NHS dentist. Mrs C, her husband and their three minor sons remained registered as fee-exempt NHS patients. Mrs C's adult daughter registered with the Dentist as a private patient.

7. On 1 July 2005, Mrs C's husband took their sons to the Dentist for a check-up. The Dentist carried out a routine examination of the boys' teeth. The dental records show an entry for that date for each boy, and record the Dentist's opinion that no treatment was required.

8. On 15 July 2005, Mrs C attended the Dentist for her own routine check-up. During the consultation, she criticised the level of charges that her daughter now faced as a private patient. Mrs C also said that she felt her sons were seen very quickly during their examination on 1 July and, because of this, questioned whether they had been properly examined. Both the Dentist and Mrs C agree that despite these issues being raised the consultation ended amicably. On 16 July 2005, however, the Dentist wrote saying that she was 'withdrawing from providing [Mrs C] and her family from dental care'.

9. At the same time, the Dentist wrote to the Board saying that she wished to withdraw immediately from treatment, giving the reason for this as 'patient's attitude'. The Board accepted this and wrote to Mrs C accordingly, providing her with details of other NHS dentists in the area with whom she could register.

10. Mrs C was very unhappy with the Dentist's decision. However, in the circumstances she did not wish to complain directly to the Dentist, and on 18 July 2005 she complained through the Board. The Dentist replied via the Board on 29 July 2005 giving her account of the consultation with Mrs C, and explaining in more detail the reasons for her decision to withdraw from treating Mrs C. Mrs C was not satisfied and asked the Ombudsman to investigate her complaint.

11. Mrs C told me that she was happy with her own examination, and left the surgery without any hint that the Dentist was unhappy with what she had said and certainly with no mention of the possibility of de-registration. Mrs C, therefore, felt that the withdrawal letter came 'out of the blue'. She said she believed it resulted from the Dentist's dissatisfaction at what Mrs C said during her consultation, with particular reference to the incident with her sons. She said that she did not specifically complain to the Dentist, rather she brought the

subject up while the Dentist was examining her teeth. She felt sure that the Dentist could not possibly have properly examined all three boys' teeth in such a short space of time (see paragraph 22).

12. The Dentist's records show that at the appointment on 15 July 2005 she told Mrs C that she considered she had examined the boys effectively, and that if Mrs C was unhappy with the care provided she had the opportunity to find another practitioner or to ask for a second opinion. The Dentist confirmed that Mrs C raised these matters with her. However, the Dentist felt that Mrs C had raised the topics, particularly that of the fees being charged for Mrs C's daughter, quite forcefully. The Dentist said she was taken aback by the comments, but her recollection is that Mrs C appeared to be focussing more on the issue of the Dentist's move to private care packages than on the boys' treatment. After the visit, the Dentist wrote up her notes and in doing so, spoke to the practice manager. At this point she was told that there had been an external event involving Mrs C and a member of the Practice staff (Ms M). She then asked Ms M what had happened. Ms M said that she had been in a local takeaway shop (where Mrs C worked) and was in conversation with another customer who was registered at the Practice. Mrs C interrupted the conversation and raised in a personalised manner the level of dental costs following the move to private practice. Ms M found this distressing.

13. I asked Mrs C for her account of these events. She confirmed that there had been an encounter in a local shop, but that she felt this was used later to show her up in a bad light. Because so many months had passed since the incident she did not recall it clearly, but she did not think she had interrupted a conversation. She also felt that the Dentist had in any case taken a dislike to her and to her family.

14. The Dentist told me that it was, of course, appropriate for Mrs C to complain to her at the Practice, but said it was inappropriate for such issues to be raised externally with members of staff. Based on the conversation she had with Mrs C and the information she had discovered about the external event, she had come to the conclusion that there was no longer a basis of mutual trust and respect and, therefore, the relationship had broken down. The Dentist felt that 'enough was enough' and was no longer happy to retain Mrs C on her list of NHS patients. She also removed the boys from the list because she thought that Mrs C might accompany them on future visits to the surgery and she felt that in the circumstances this would be inappropriate. The Dentist appreciated

that her letter telling Mrs C about this was brief and to the point, but the Dentist was about to go on holiday and wanted to send it out before she went. She recognised with hindsight that she could have provided a better explanation and could have explained that the decision resulted from both events.

15. The Regulations that govern removal of a patient from a dentist's list say that a dentist can terminate their arrangement with a patient by giving three months notice of their intention to do so. Where the Dentist wishes to terminate the arrangement with less than three months notice, they must send the appropriate form to seek permission of the Board to do so, giving the reasons for the request. A patient may also terminate the agreement and register with another dentist.

*(a) Conclusion*

16. Both accounts of the consultation emphasise different elements of Mrs C's dissatisfaction. It is clear from the Dentist's response to the complaint and from my interview with her that she believes that the underlying reason for the complaint was that Mrs C was unhappy with her decision to accept non-exempt patients only on a private basis. On the other hand, Mrs C believes that she was removed from the list simply because she raised the issue of her sons' examination during her own appointment, and that the Dentist has taken a dislike to her and her family.

17. Mrs C's concern at being removed is understandable, especially as she received only a brief letter saying that this would happen, without explanation. It is also understandable, given the timing of the letter, that Mrs C felt that this resulted solely from her comments about her sons' dental examinations. It would certainly have been better for the Dentist to have provided Mrs C with a clear explanation of her reasons at the time and the Dentist, to her credit, has recognised this by acknowledging it at interview.

18. Regardless of this, however, the Dentist was entitled to act as she did. She felt that Mrs C's criticisms of the move to private practice (both at the Practice and externally) had undermined the dentist/patient relationship. It is clear from the Regulations that if a practitioner wishes to remove a patient from their list they are free to do so as long as they either give the required notice or gain permission from the Board to remove the person. That clearly happened in this case – the records show that the Dentist followed the proper steps to terminate the relationship. From my interviews with both parties, it is also very

clear to me that the relationship had indeed broken down. Taking all the circumstances into account, I do not uphold this complaint.

19. I note, however, that there are no guidelines giving advice about best practice in such a situation. The Ombudsman considers that it would be helpful for dentists and patients to have more guidance in respect of removal from dental lists, and raised this with the Scottish Executive Health Department in the context of an earlier Report. The Ombudsman is pleased that they agreed to consider this.

*(a) Recommendation*

20. Although I have not upheld this complaint, I recognise that the way the decision was made and communicated to Mrs C gave rise to concern and was one of the reasons that she complained. The Ombudsman, therefore, recommends that the Dentist reviews her procedures for handling removal of patients from her list, and that in future she takes into account the advice in any guidelines that are produced (paragraph 19).

**(b) The Dentist did not perform an adequate examination of Mrs C's sons' teeth**

21. The appointment about which Mrs C complained took place on 1 July 2005. The Dentist has explained that the appointment made was for one single routine ten-minute examination period for all three boys. Mrs C said when I spoke to her that two of her sons attended, but the Dentist said (and the records show) that all three boys attended.

22. Mrs C said that on the way to the surgery, her husband dropped her off to visit a friend, with the intention that he would return to collect her after the boys' check-ups were complete. She was, therefore, surprised when they returned to collect her much earlier than she had expected. This gave rise to her concern that the visit had happened so quickly that the boys' teeth might not have been thoroughly examined. Mrs C confirmed that her husband did not raise any such concerns with the Dentist.

23. The Dentist told me that the children arrived with their father early for their appointment. As two patients had failed to attend earlier appointments, she was, therefore, able to see the children before their actual appointment time. She described the check-ups as routine and easy. Although she could not say

exactly how long these took in total, each boy came into the surgery separately. She did not say much to them during the examinations, which did not take long.

24. The Adviser has examined the boys' dental records. He said that in each case he would not expect a check-up to take long. He noted that the youngest child was only four years old at the time and had only 20 'baby teeth' present, so the examination would take very little time. He also noted that at other relatively recent check-ups, none of the children required treatment. He was, therefore, of the opinion that the Dentist carried out appropriate and proper examinations of Mrs C's children's teeth.

*(b) Conclusion*

25. Mrs C told me that she was concerned that the examinations were inadequate because the children came back from their appointment much more quickly than she had expected. However, I note that she was not present at the surgery and her husband, who was, did not raise any concerns with the Dentist about the time the examinations took.

26. I also note that only a single ten-minute appointment was booked for the examinations. This in itself implies that the examinations were not expected to take long. Taken in conjunction with the Dentist's evidence that the children were seen earlier than planned (paragraph 23) I conclude that this does not indicate that the examinations were carried out too quickly. The Adviser said that the dental records indicate examinations of the type he would normally expect to see in children of these ages and with these dental histories. I have found no evidence to support the view that the Dentist failed to properly examine the children's teeth and, therefore, do not uphold this complaint.

27 March 2007

**Explanation of abbreviations used**

Mrs C	The complainant
The Dentist	Mrs C's General Dental Practitioner
The Board	Lothian NHS Board
The Adviser	The Ombudsman's professional dental adviser
Ms M	A member of staff at the Dental Practice
FHSA (mentioned in Annex 2)	Family Health Services Authority



## List of legislation and policies considered

### Statutory Instrument 1996 No 177 (S14)

*The National Health Service (General Dental Services) (Scotland) Regulations 1996 Sch 1 (Part II)*

Termination of a continuing care arrangement or a capitation arrangement

11. (1) Subject to sub-paragraph (4), a dentist who wishes to terminate a continuing care arrangement or a capitation arrangement shall give to the patient 3 months' notice in writing of the termination of the arrangement.

(2) Where a dentist gives notice under sub-paragraph (1), he shall use his best endeavours to complete satisfactorily before the termination of the arrangement any care and treatment which he has agreed to provide for the patient and which is outstanding and any further treatment that may be necessary to secure and maintain his oral health.

(3) Where a dentist gives notice under sub-paragraph (1), he shall notify the FHSa accordingly and give details to the FHSa of any care and treatment which he has agreed to provide to the patient and which is outstanding including any arrangements made for completion of that care and treatment.

(4) Where a dentist wishes a continuing care arrangement or a capitation arrangement to be terminated on less than 3 months' notice, he shall apply in writing to the FHSa:

- (a) asking that it terminate the arrangement;
- (b) setting out the reasons why he wishes the arrangement to be terminated; and
- (c) giving details of any care and treatment which he has agreed to provide for the patient and which is outstanding including any arrangements made for completion of that care and treatment.

(5) Where a dentist applies to the FHSa under sub-paragraph (4), the FHSa may, after considering any representations made by the patient, terminate the arrangement on such date and on such terms as to completion of any outstanding care and treatment mentioned in sub-paragraph (4)(c) as it thinks fit, save that, where an arrangement is terminated because the patient has refused to pay the NHS charge, the dentist shall not be obliged to complete

that care and treatment.

(6) An FHSA which terminates an arrangement under sub-paragraph (5) shall so inform the patient, the dentist and the Board in writing.