Scottish Parliament Region: Glasgow

Case 200500388: Greater Glasgow and Clyde NHS Board

Summary of Investigation

Category

Health: Hospital; Staff conduct and behaviour, complaint handling

Overview

The complainant (Ms C) was a patient at Dykebar Hospital (the Hospital), Paisley, in August/September 2003. She raised a number of issues concerning the conduct and behaviour of Mr and Mrs D (two of the Hospital's staff) towards her and the manner in which the former Argyll and Clyde NHS Board[1], (the Board) dealt with her complaint.

Specific complaint and conclusion

The complaint which has been investigated is the handling of Ms C's complaint by the Board (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Board:

(i) ensure that they have in place a system for handling complaints that can demonstrate to a complainant that their complaint has been fairly, impartially and thoroughly investigated;

(ii) ensure that, in particular, they have in place a system for handling complaints in circumstances where serious allegations are made by a patient about a member of staff;

(iii) ensure that they and their employees understand their responsibilities in relation to protecting staff and patients, particularly in mental health settings;

(iv) ensure that current arrangements for separating the complaints process from the disciplinary process meet the requirements of the current NHS complaints guidance; and

(v) issue Ms C with a full formal apology for the failures identified in this report. The apology should be in accordance with the Ombudsman's

[1] Argyll and Clyde NHS Board was dissolved in April 2006 and its responsibilities were taken over by Greater Glasgow and Clyde NHS Board. In this report the term 'the Board' is used to refer to both of these NHS Boards and their divisions.

guidance note on 'apology' (which sets out what is meant and what is required for a meaningful apology).

The Board have accepted the recommendations.

Main Investigation Report

Introduction

1. In August 2004 Ms C formally complained to the Greater Renfrewshire Division (the Division) of the former Argyll and Clyde NHS Board concerning the behaviour and conduct of two members of staff, Mr and Mrs D at Dykebar Hospital (the Hospital), Paisley. Ms C's complaint related to incidents she said had occurred both inside and outwith the Hospital. Mr and Mrs D are husband and wife and are neighbours of Ms C.

2. In July 2005, the Ombudsman received a complaint from Ms C who was unhappy with the manner in which her complaint had been handled by the Greater Renfrewshire Division of the then Argyll and Clyde NHS Board.

3. The complaint from Ms C which I have investigated is the handling of Ms C's complaint by the Board.

Investigation

4. The investigation of this complaint involved reading all the documentation supplied by Ms C; her clinical records and the Board's complaint file. I was assisted in my investigation by two of the Ombudsman's nursing advisers, one a mental health nurse (the Advisers).

5. 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 were given an opportunity to comment on a draft of this report.

Complaint: The handling of Ms C's complaint by the Board

6. On 16 August 2004 Ms C, accompanied by her mother, met with the Acting Clinical Nurse Manager of the Acute Admissions Unit (the Clinical Manager) of the Hospital where she complained about the conduct of Mr D. This does not appear to have been logged as a formal complaint. On 22 August 2004, Ms C wrote a letter of complaint to the Board concerning the behaviour of Mr D.

7. In the letter Ms C made a number of allegations about Mr D. In particular, she complained that Mr D may have had access to her clinical files and he had breached her confidentiality by disclosing to neighbours and the police that she had a mental health problem. She further alleged that both Mr and Mrs D were

in and out of her ward outwith visiting times while she was an in-patient at the Hospital; had played loud music at home which disturbed her when she was trying to rest while on leave from the Hospital; had been abusive and aggressive towards her and made references to her mental state and watched her come and go from her house. Mrs D had knocked into her with her bike and Mr D had banged on the door of her home shouting abuse at her father.

8. Thereafter, Ms C and her father met with the Clinical Manager who according to Ms C said he would pass on her concerns to his supervisor but he thought most of the issues were legal matters.

9. On 21 September 2004 the Director of the Division (the Divisional Director) replied to Ms C's letter of 22 August 2004. The Divisional Director said she understood Ms C had already raised some of the issues with the Clinical Manager who had indicated that he felt many of her concerns were more of a legal nature and had advised her to seek advice from the police. In relation to the complaint about a possible breach of confidentiality, there would appear to be no evidence to substantiate this. She said that Mr D and Mrs D as employees of the Hospital were bound by a confidentiality code. There was no evidence that they had breached the code.

10. With regard to Ms C's concerns about a member of staff accessing her records while she was an in-patient, the Divisional Director stated again that there was no evidence to suggest that this took place because Mr D was not working in the ward in which Ms C had been a patient at the time she was there. In relation to Ms C's complaint about Mr and Mrs D being in her ward during her admission, she could only comment that as they both were employees it would be reasonable to assume that they had legitimate business to be there.

11. The Divisional Director said that as the other issues raised by her in the letter of complaint occurred at her home she should contact the police or a solicitor about these complaints. I note that prior to issuing the letter to Ms C, the Board had contacted the police by telephone. The police had indicated that there had been a long running dispute between Ms C and Mr and Mrs D.

12. On 30 September 2004 Ms C replied to the Divisional Director's letter. She stated that Mr and Mrs D told neighbours and the police that she was suffering from depression and that she had been in the Hospital. Ms C regarded this as a breach of confidentiality. While she was an in-patient Mr D

came into the ward every night. She thought he could have seen her medical records and did not believe he was in there on other business. She did not feel that it was fair to assume that Mr and Mrs D were on legitimate business when they were in the ward, particularly as Mrs D was employed in the administration office two mornings a week at that time. She said that Mr and Mrs D came into the ward on two occasions outwith working hours.

13. Ms C felt that just because Mr and Mrs D were employed at the Hospital this did not mean that they had the right to wander anywhere. She mentioned to a member of staff in the ward that Mr D had brought his wife in. Ms C was told that she was overreacting. Ms C said a lot of the matters raised did happen at her home but a nurse has a code of ethics to be adhered to whether he or she is in or out of hospital.

14. On 19 November 2004 the Divisional Director replied to Ms C's letter. She said that the Directorate Nurse Lead had informed her that she had met with Ms C and conducted a full investigation into her outstanding concerns. The Directorate Nurse Lead had confirmed that the matter had been fully explored with Mr D and there was no evidence to suggest that any breach of confidentiality had taken place.

15. With regard to her concerns about Mr D accessing her records while she was an in-patient, the Directorate Nurse Lead had said that any member of staff working within the Acute Admission Unit would normally be called upon to relieve night staff within each of the three admission wards. They would have reason to access the records to provide the prescribed nursing care.

16. The Divisional Director said it was not appropriate for them to comment on the other issues in her letter as these appeared to be personal matters not related to the member of staff's workplace. The Divisional Director said it was appreciated that further admissions to the acute admissions unit at the Hospital may be inappropriate and should Ms C require any future admission this would be facilitated at Ward 2 of the Royal Alexandra Hospital.

17. On 16 December 2004 Ms C requested an Independent Review of her complaint, an option available under the NHS complaints process then in place. Ms C felt that Mrs D should not be allowed unlimited access to various areas of the Hospital because, at that time, Mrs D was working two mornings a week in the administration office. Ms C noted the comments regarding the accessing of

records by staff. However, while she was a patient in the Hospital she was not aware of Mr D being called upon to relieve night staff in her ward. She, therefore, felt that there was no reason for him to look at her records.

18. Ms C said that the Directorate Nurse Lead also told her that the other issues were personal matters and not related to the member of staff's workplace. Ms C thought that a nurse had a code of practice to act professionally 24 hours a day, 7 days a week and if an incident outwith a hospital involved a nurse and a former patient this should be classed as a work place issue.

19. Ms C said that she had told the Directorate Nurse Lead that it might be best if she went to the Royal Alexandra Hospital should she have to go back into hospital again. However, when the Divisional Director confirmed this, Ms C felt that the decision was made because she had complained about a member of staff rather than it being in her best interest.

20. The Convener of the Independent Review Panel said that Ms C felt that by raising a formal complaint she was compelled to attend the Royal Alexandra Hospital for future mental health admissions. He decided to refer this complaint back for a local resolution for 'full reasons' for this decision to be given to Ms C.

21. In relation to Ms C's complaint about Mr and Mrs D accessing her medical records, the Convener felt that further local resolution was needed and that the Division should answer whether 'a student nurse', Mrs D, had unfettered access to patients' medical records and was authorised to access patient records purely on a professional, need-to-know basis.

22. In relation to the incidents that occurred at Ms C's home and the alleged breach of confidentiality, the Convener felt that these were potentially disciplinary matters and should be dealt with by the Division as such. The Board say they decided not to act on the Convener's recommendation because the potential for disciplinary action was considered and addressed in November 2004 following an interview with Mr D.

23. In relation to Ms C's complaint that Mr and Mrs D should not have accessed the ward where she was a patient; the Convener felt that the Hospital's employees would be free to move about in their place of work in the course of their duties. It would not be unusual for a wife to enter a ward to

speak to her husband on a personal or professional matter and as they were both bound by confidentiality clauses he considered that no further action was required in relation to that complaint.

24. On 6 April 2005, Ms C initially complained to the Ombudsman. A telephone enquiry by the Ombudsman's office with the Board revealed that the case had been filed without further action. The Board agreed to write to Ms C explaining what the position was and further action they intended to take in light of the Convener's decision. Ms C was advised that she could raise her complaint with this office again after the local procedures had been exhausted.

25. On 7 June 2005, the Board wrote to Ms C saying that their response to her complaint may have appeared to suggest that in future she would not be admitted to the Hospital. They offered apologies for any distress this may have caused and assurances that this was not the case. The intention was to offer her an alternative area of care in the future but there was no reason that future in-patient care could not be within the Admissions Unit at the Hospital if this was her choice.

26. With regards to access to her medical records they said that Mrs D would not at any time have unrestricted access to her medical records. Any access allowed would be under the supervision of a qualified member of staff and restricted on a need-to-know, professional basis. Any authorised access would only be on a professional basis in relation to nursing/medical care.

27. On 23 June 2005 Ms C wrote again to the Board setting out why she remained dissatisfied and Ms C was advised to take her complaint to the Ombudsman's office.

28. On 14 July 2005, Ms C complained to the Ombudsman's office. She said that there were a number of discrepancies in replies she had received from the Board about her complaint. In particular she was told that Mr D would have had no reason to look at her notes then later she was told that he would; Mrs D was a student nurse but she was not, she worked as an administration assistant. She also felt that Mr D should not have been able to bring his wife into the ward. She maintained that Mr D's behaviour outwith the Hospital was a breach of confidentiality. She considered she had suffered an invasion of privacy and unnecessary anxiety and intimidation which prolonged her recovery.

29. After careful consideration of Ms C's complaint, and having taken advice from the Advisers, it was determined that the focus of the investigation of Ms C's complaint by the Ombudsman's office should be the Board's handling of Ms C's complaint. The reasons for this were the age of the allegations by the time they were received in this office, the various allegations related to issues both inside and outside of Mr and Mrs D's workplace; there would be difficulty in establishing what actually happened and we had a duty of fairness to all the parties concerned. An example of the difficulty in finding corroborating evidence to support Ms C's complaint was in November and December 2005 when enquiries were made by this office with Strathclyde Police concerning Ms C's allegation that Mr D gave information to police officers about Ms C's admission to the Hospital and the condition for which she was receiving treatment. On 29 December 2005 the Police Divisional Commander replied that a check of their systems had failed to reveal any trace of information which would give weight to the claim of Ms C that information regarding her medical treatment was passed to a third party by Mr D.

30. I acknowledge that at the time of the circumstances giving rise to Ms C's complaint, the Hospital was managed by and Ms C's complaint was dealt with by the former Argyll and Clyde NHS Board, which ceased to exist in April 2006. However, in view of the extremely serious nature of the allegations made by Ms C, a patient, against members of the Board's staff it was important to establish how the Board had handled Ms C's complaint about Mr and Mrs D.

31. The initial handling of Ms C's complaint by the Board seems to have been poor. There does not appear to have been a proper assessment of the complaint, key issues within the complaint were not addressed and Mr and Mrs D were not told at the outset about the complaint made by Ms C. Even when Ms C reiterated her complaint and raised very serious concerns in relation to Mr D's conduct, these matters do not seem to have been properly investigated.

32. There do not appear to be any records of Ms C's meeting with the Clinical Manager, no records of the subsequent investigation undertaken by the Directorate Nurse Lead, no copies of any statements. It is hard, therefore, to be confident that Ms C's allegations were taken seriously.

33. On 5 October 2004 there is a memo from the Board's Complaints and Claims Manager to the Clinical Manager stating that the Director of Nursing has

requested further investigation of certain issues in Ms C's letter of 30 September 2004 and suggesting that Mr D be interviewed.

34. Correspondence from those representing Mr D suggests that he was not made aware of the complaint until November 2004 when he was interviewed.

35. Although Ms C's complaint was discussed with Mr D there is only a short note of an interview with him in the presences of a human resources adviser and Mr D's trade union representative. There is no detailed statement from him, as I expect there should have been. The note of the meeting and the subsequent reply to Ms C suggests that the interview was not detailed and did not address many of the issues. There is no evidence that comments were obtained from Mrs D.

36. Mrs D was a student nurse within the Hospital. The Board's assertions that as a student nurse, Mrs D could only have accessed records under the supervision of a registered nurse might not be seen as an assurance if that registered nurse had been her husband, as Ms C alleges.

37. Further, Ms C's clinical notes show that on 16 August 2004 she told her clinical psychologist (the Clinical Psychologist) that she was being harassed by Mr D and she had complained to the Police and was going to make a complaint to the Board about his behaviour. Ms C claimed that she told the Board that the Clinical Psychologist was willing to testify on her behalf and also to have advised that Mr D had clearly breached his position. There is again, as in the case of Mr D, only a short note of an interview with the Clinical Psychologist who denied saying this to Ms C. There is no detailed statement from her, as I expect there should have been.

38. I accept that a number of the allegations made by Ms C against Mr and Mrs D concern issues that fell outside the workplace and were a matter for the police. I also accept that the Board did interview Mr D and the Clinical Psychologist. However, the record of the interview with Mr D, in particular, clearly shows there was a history of problems between Mr and Mrs D and Ms C and her family and did not appear to address many of the issues that Ms C had complained about. Therefore, it was important to seek to establish whether the allegations made by Ms C about Mr and Mrs D were spurious or true because of their serious nature and the implications of such conduct, if they were found to be proven, for a registered nurse. The allegations made by Ms C against

Mr D and his wife were essentially allegations of breaches of confidentiality and professional misconduct. In particular, in the case of Mr D who, because of his employment as a nurse at the Hospital, had a professional responsibility to Ms C whom he allegedly knew to have been a patient there.

39. The Board had responsibilities towards Ms C as a patient. Ms C was entitled to have her complaint dealt with under NHS complaints procedure. Her complaint should have been investigated impartially and without prejudice. The complaint was about the conduct and attitude of a member of the Board's mental health nursing staff towards someone with mental illness. I do not believe that the investigation was adequate in the circumstances.

40. Clinical staff who are working in mental health settings have to be alert to difficulties in relationships with patients in their care. They also have a duty to act in the interests of patients and to prioritise that where there is a conflict of interests. Ms C alleges that Mr and Mrs D were aware that she had been a patient at the Hospital and had mental health problems. It does not appear that this was clearly established at any point by the Board. If the conduct had taken place then that would have constituted a breach of the professional code of conduct for nurses. Employers of registered nurses, such as the Board should have an interest in such matters and should take steps to address them when they become aware of them.

41. The Clinical Psychologist also had information which suggested that a nurse employed by the Board was allegedly harassing a patient of the Board. In the interest of both employee and patient this should have been addressed and or reported so that it could be investigated and dealt with. It appears that the Clinical Psychologist only reported what Ms C had told her when she was interviewed on or about 13-14 November 2004 by a member of the Board investigating Ms C's complaint.

42. I am also mindful that the Board had responsibilities to Mr and Mrs D as employees who should have been told about the complaint as soon as possible and given the opportunity to put their version of events. Mr D does not appear to have been aware of the complaint until November 2004, as his nursing federation representative pointed out. The allegations against Mr D in particular were extremely serious and should have been addressed in the interest of all the parties. Furthermore, as there was evidence of ongoing conflict between

Ms C and Mr and Mrs D, the Board should have taken action for both risk assessment and management purposes.

43. It is vital that when a complaint to a public body involves allegations against individual members of staff the body can demonstrate to the complainant and the complained against that the complaint has been fairly, impartially and thoroughly investigated. The Board has failed to do so in this instance. This is a wholly unacceptable and unsatisfactory situation for all of the parties involved. I fully appreciate that Ms C will be, to say the least, deeply disappointed and frustrated by this state of affairs.

44. Additionally, the current NHS Complaints process (like that in force at the time Ms C made her complaint) requires a clear separation of complaints from discipline. The disciplinary process is entirely separate from the complaints process and the aims of the two are very different. The disciplinary process is essentially concerned with an individual's contract of employment/Terms of Service, while the focus of the complaints process is to resolve issues between parties and to learn lessons for improvement to service delivery.

45. The NHS Complaints process also requires that if any complaint received by a member or employee of a NHS Board appears to raise matters normally dealt with under the disciplinary procedure and/or by a professional regulatory body they should immediately refer the matter to the person appointed by Board to deal with such matters. This does not seem to have happened in the present case.

46. It is essential that the Board ensures that when it is dealing with complaints similar to Ms C's arrangements for separating the complaints process from the disciplinary process are dealt with appropriately and meet the requirements of the current NHS complaints guidance.

Conclusion

47. In conclusion, the issues raised by Ms C in her complaint to the Board were not appropriately addressed and investigated by the Board. Therefore, I uphold the complaint.

Recommendations

48. The Ombudsman recommends that the Board:

(i) ensure that they have in place a system for handling complaints that can demonstrate to a complainant that their complaint has been fairly, impartially and thoroughly investigated;

(ii) ensure that, in particular, they have in place a system for handling complaints in circumstances where serious allegations are made by a patient about a member of staff;

(iii) ensure that they and their employees understand their responsibilities in relation to protecting staff and patients, particularly in mental health settings;

(iv) ensure that current arrangements for separating the complaints process from the disciplinary process meet the requirements of the current NHS complaints guidance; and

(v) issue Ms C with a full formal apology for the failures identified in this report. The apology should be in accordance with the Ombudsman's guidance note on 'apology' (which sets out what is meant and what is required for a meaningful apology).

49. The Board have accepted the recommendations.

24 October 2007

Annex 1

Explanation of abbreviations used

Ms C	The complainant
The Division	The Renfrewshire Division of the former Argyll and Clyde NHS Board
Mr and Mrs D	The employees of the Board who are the subject of the complaint
The Hospital	Dykebar Hospital, Paisley
The Board	Greater Glasgow and Clyde NHS Board (formerly Argyll and Clyde NHS Board)
The Advisers	Two of the Ombudsman's nursing advisers, one a mental health nurse.
The Clinical Manager	Acting Clinical Nurse Manager of the Acute Admissions Unit of the Hospital
The Divisional Director	The Board's Divisional Director
The Directorate Nurse Lead	The Board's employee who investigated Ms C's concerns
The Clinical Psychologist	Ms C's clinical psychologist

Annex 2

List of documents and policies considered

The Nursing and Midwifery Council's code of conduct on standards for conduct, performance and ethics for registered nurses, midwives and specialist community public health nurses

NHS Complaints Procedure Guidance