Scottish Parliament Region: North East Scotland

Case 201201006: Tayside NHS Board

Summary of Investigation

Category

Health: Hospital; General Medical; clinical treatment; diagnosis

Overview

The complainant (Mr C) complained about the treatment he received following his referral to the Orthopaedic Department at Ninewells Hospital for an injury to a muscle in his chest. His GP (Doctor 1) referred him to a consultant orthopaedic surgeon (Doctor 2). Doctor 2 assessed him and concluded that no surgical treatment would improve his injury. He then suggested that if Mr C was worried about the look of the injury, Doctor 1 should refer him to plastic surgery services. Doctor 1 referred Mr C to plastic surgery services for cosmetic repair. A consultant plastic surgeon declined the referral prior to seeing Mr C as cosmetic augmentation of the pectoral muscle was not a procedure offered by the plastic surgery services.

Specific complaint and conclusion

The complaint which has been investigated is that Tayside NHS Board (the Board) have failed to provide appropriate clinical treatment following a GP referral for a chest injury (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Board:	*Completion date*
(i) ensure that Mr C is referred for a second consultation with an orthopaedic surgeon;	15 May 2013
(ii) ensure this case and the identified failings are discussed with Doctor 2 at his next appraisal;	10 April 2013
(iii) ensure the Medical Director is made aware of the identified failure to facilitate the request for a second opinion; and	3 April 2013
(iv) issue a full apology to Mr C for the failings identified in this case.	17 April 2013

The Board have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. The complainant (Mr C) told us that he had suffered a chest injury. Mr C was a body builder and had sustained an injury whilst bench pressing 180 kilograms. His GP (Doctor 1) referred him for an orthopaedic consultation at Ninewells Hospital (the Hospital). A consultant orthopaedic surgeon (Doctor 2) examined Mr C and concluded that no surgical procedure would benefit him. Doctor 1 then referred him to Doctor 3, a consultant plastic surgeon. Doctor 3 vetted and cancelled the referral prior to Mr C being seen, stating that it was not something for which they could provide treatment.

2. Mr C complained that Tayside NHS Board (the Board) refused to provide appropriate treatment for his injury. He complained about the thoroughness of his orthopaedic examination. He disputed the decision that no surgical treatment was required. He also complained that plastic surgery services unreasonably declined to offer him cosmetic augmentation. He stated that this had resulted in a loss of confidence with his appearance and that this had had a significantly detrimental impact on his career as a bodybuilder.

3. The complaint from Mr C which I have investigated is that the Board failed to provide appropriate clinical treatment following a GP referral for a chest injury.

Investigation

4. During the course of the investigation of the complaint, my complaints reviewer obtained and examined Mr C's clinical records and a copy of the Board's complaint file. She also reviewed Mr C's correspondence with my office. She also obtained independent clinical advice from one of my advisers, an orthopaedic consultant (the Adviser).

5. 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.

Complaint: The Board have failed to provide appropriate clinical treatment following a GP referral for a chest injury

6. Mr C attended Doctor 1 on 1 November 2011. He was diagnosed with a presumed pectoralis major partial tear. The injury occurred the previous day while he was bench pressing a weight of 180 kilograms. Doctor 1 referred him to Doctor 2 for an assessment. Mr C was reviewed by Doctor 2 on 3 November 2011. He was diagnosed with a partial tear of the right pectoralis major. After the consultation Doctor 2 wrote to Doctor 1 having determined that there was no surgical treatment that could be offered that would improve the function of Mr C's chest. He said that only time, training and physiotherapy would indicate whether Mr C would be able to get back to his original strength. He also advised that it was not possible to tell whether there would be an alteration to the look of Mr C's chest until the swelling had gone down. He advised that if Mr C was worried about the look of his injury then he should be referred to plastic surgery services for a consultation.

7. Doctor 1 referred Mr C to Doctor 3 on 14 February 2012. Doctor 3 cancelled this referral on the same day. The reason for cancellation was given as 'not an appropriate referral for this clinic' and, 'not something we can provide treatment for'. This form was sent to Doctor 1 to advise him of the cancellation and a receipt was sent back to the Board that confirmed receipt of the cancellation.

8. Mr C complained to the Board on 26 March 2012. He explained the impact of his injury to his occupation and the affect this had had on his confidence. He also complained that Plastic Surgery services had refused to see him. The Board responded on 11 April 2012 that both Doctor 2 and Doctor 3 felt there was no treatment that could be offered to him. They said it was clearly documented in the letter from Doctor 2 to Doctor 1 and in Mr C's orthopaedic clinic notes that repair of the muscle was not possible. The Board was sorry that they were unable to offer Mr C any assistance with his injury, but reiterated this was purely a clinical decision that was reached after discussion between a number of medical staff.

9. Mr C complained again to the Board by telephone on 27 April 2012. He listed further concerns that he had about his treatment and that he wished a second opinion and scan. The Board responded to his request for a second opinion on 4 June 2012. Mr C's case had been discussed with the Medical Director at the Board (the Director) who felt that a second opinion was

inappropriate because he felt that in fact Mr C had already received two separate clinical opinions from consultant staff within both the orthopaedic and plastic surgery services. The Board reiterated that any attempt to surgically repair the muscle would most likely be unsuccessful. They also explained that cosmetic augmentation was not a service offered within plastic surgery services at the Hospital. Mr C remained unhappy with this response and complained to my office on 9 June 2012. He explained that he could not understand why the doctors had not given him a scan. He wanted us to investigate whether the treatment he had received was reasonable or not. He explained that impact upon him both financially and with regards to his confidence and self-esteem.

Advice Obtained

10. The Adviser noted that Mr C had sought advice from Doctor 1 soon after the injury, and Doctor 1 had immediately arranged for an assessment from Doctor 2. The Adviser said that although the review was prompt, in his view it was flawed. He said it was this initial failure on which all the subsequent issues hung. The Adviser did not accept Doctor 2's position that there was no surgical treatment that could be offered to Mr C. The Adviser explained that traditionally the risks and technical difficulties associated with surgical repair rendered this a poor choice. He considered that this was a dated opinion, and was not now the case. He said there was now a significant body of evidence that early effective surgical treatment could result in normal recovery of shoulder strength. The alternative, not having a surgical treatment, would likely result in a long-term reduction in strength in certain movements of Mr C's shoulder. The Adviser also said that studies showed that not treating the injury surgically would lead to a change in the appearance of the chest wall. He suggested that orthopaedic surgery could have improved the appearance of Mr C's chest, with the scar being camouflaged in the anterior axillary fold. The Adviser considered that Doctor 2 had based his decision on inadequate knowledge of the medical literature for treatment of this injury and this was not reasonable. He continued that General Medical Council (GMC) Good Medical Practice states that doctors must provide a good standard of practice and care by keeping their professional knowledge and skills up to date.

11. The Adviser explained that in order for Doctor 2 to determine the best course of treatment for Mr C he should have considered the importance of strength and cosmesis to Mr C. As Mr C was a professional body builder, the eventual strength of his shoulder and the look of his chest after injury was significant to him. Doctor 2's prescribed course of treatment would likely result

in a long-term reduction in strength and a change in appearance of his chest. The potential benefits and impact of both a surgical and non-surgical course of treatment should have been discussed with Mr C and informed Doctor 2's eventual treatment decision. There was no indication that Doctor 2 discussed these issues with Mr C.

12. The Adviser said that the consultant did not follow GMC Good Medical Practice guidance in his consultation with Mr C. GMC Good Medical Practice states that Doctors should:

- work in partnership with patients;
- listen to patients and respond to their concerns and preference;
- give patients the information they want or need in a way that they can understand;
- respect patients' right to reach decisions with you about their treatment and care; and
- encourage patients who have knowledge about their condition to use this when they are making decisions about their care.

13. The Adviser looked at the communication after Mr C's request for a referral to plastic surgery services had been denied by Doctor 3. GMC Good Medical Practice states that communication between professionals is vital for good patient care. In addition it says that:

> 'If you provide treatment or advice for a patient, but are not the patient's general practitioner, you should tell the general practitioner the results of the investigations, the treatment provided and any other information necessary for the continuing care of the patient, unless the patient objects.'

14. The Adviser was of the view that this did not happen in this situation. However, the Board commented on the draft report and explained that Doctor 3 had in fact notified Doctor 1 that the referral had been denied. The Board has now supplied us with a receipt that shows that Doctor 1 acknowledged the cancellation of the referral.

15. I asked the Adviser to explain whether the Board's decision not to offer Mr C a second opinion was reasonable. In Mr C's case the Adviser noted that he had only one opinion from Doctor 2 and what was effectively a statement of healthcare policy in that Board from Doctor 3. Doctor 3 had not seen Mr C so

this could not constitute a second opinion. On this basis the Adviser said the Director had failed to respect Mr C's right to seek a second opinion as set out in GMC Good Medical Practice: Providing Good Clinical Care, Section 3.

16. Finally I asked the Adviser to explain whether a surgical option was still viable for Mr C. He advised that as twelve months had passed there would have been muscle wastage and tendons would have retracted. This would make an operation more challenging and could lead to a potential compromise to the eventual outcome. The Adviser was of the opinion that Mr C should still have the opportunity to have dialogue with and second opinion assessment by an orthopaedic surgeon as there may still be some advantage to surgical reconstruction.

Conclusion

17. Mr C complained that the Board failed to give him appropriate clinical treatment following a GP referral for a chest injury. The advice that I have accepted is that Doctor 2 failed to follow GMC guidelines during the consultation with Mr C by not listening and responding reasonably to his concerns, personal circumstances and preferences or respecting his right to make decisions about his care. I am critical of this.

18. Doctor 2 considered that there was no treatment that could improve the function of his injury. However, my Adviser has confirmed that surgical treatment was a viable option that could improve both the strength and look of Mr C's chest area, and that Doctor 2 had failed to consider more recent medical evidence. Furthermore, the potential benefits and impact of both a surgical and non-surgical course of treatment should have been discussed with Mr C and informed Doctor 2's eventual treatment decision. This did not happen and again I consider that Doctor 2's actions did not comply with GMC guidelines.

19. Finally, I am concerned that the Director failed to follow GMC guidelines in respect of Mr C's right to seek a second opinion. This led to a missed opportunity to help Mr C's situation by facilitating a second opinion. The denial of a second opinion had significant consequences given the fact that a surgical option is now less reliable.

20. For all these reasons and having carefully considered the advice I have received, which I accept, I am satisfied there were a number of failings by the Board. I uphold this complaint. As a result Mr C has suffered significant

injustice, and the impact upon his life should not be underestimated. I have made a number of recommendations to address the failings identified, to help ensure learning, and to prevent any similar occurrence in future cases.

Recommendations

21. The Ombudsman recommends that the Board:	*Completion date*
(i) ensure that Mr C is referred for a second consultation with an orthopaedic surgeon;	15 May 2013
(ii) ensure this case and the identified failings are discussed with Doctor 2 at his next appraisal;	10 April 2013
(iii) ensure the Medical Director is made aware of the identified failure to facilitate the request for a second opinion; and	3 April 2013
(iv) issue a full apology to Mr C for the failings identified in this case.	17 April 2013

22. The Board have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Board notify him when the recommendations have been implemented.

Annex 1

Explanation of abbreviations used

Mr C	The complainant
Doctor 1	Mr C's GP
The Hospital	Ninewells Hospital
Doctor 2	Consultant Orthopaedic Surgeon
Doctor 3	Consultant Plastic Surgeon
The Board	Tayside NHS Board
The Adviser	The Ombudsman's Orthopaedic Consultant Adviser
The Director	The Medical Director
GMC	General Medical Council

Annex 2

Glossary of terms

Anterior axillary fold	under arm area
Pectoralis major partial tear	a muscle tear in the upper chest area

Annex 3

List of legislation and policies considered

GMC Good Medical Practice Guidance for Doctors (2006)