

Case 201203374: Greater Glasgow and Clyde NHS Board

Summary of Investigation

Category

Health: Prison Health Care; complaints handling

Overview

Mr C, a prisoner, complained that the prison health centre's handling of his complaint forms was unreasonable. He also complained that he had problems in accessing the relevant complaint forms.

Specific complaint and conclusion

The complaints which have been investigated are that:

- (a) the prison health centre's handling of his complaint forms from 1 to 3 November 2012 was unreasonable (*upheld*); and,
- (b) prisoners' access to Board complaint forms has been unreasonable (*upheld*).

Redress and recommendation

The Ombudsman recommends that the Board:

	<i>Completion date</i>
(i) issue a written apology to Mr C for the failure to deal with his complaint in line with their complaints procedure;	13 November 2013
(ii) ensure that the local process in place for the management of prison health care complaints is in line with the good practice outlined in the Scottish Government guidance 'Can I help you?'; and	20 December 2013
(iii) take steps to confirm that complaint forms are readily available for prisoners to access.	4 December 2013

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

Main Investigation Report

Introduction

1. The complainant (Mr C), who is a prisoner in HMP Low Moss, complained that the prison health centre's handling of his complaint forms was unreasonable. He also complained that he had problems in accessing the relevant complaint forms.

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

- (a) the prison health centre's handling of his complaint forms from 1 to 3 November 2012 was unreasonable; and,
- (b) prisoners' access to Board complaint forms has been unreasonable.

Investigation

3. In investigating Mr C's complaint, my complaints reviewer considered all of the information submitted by Mr C. In addition, he made enquiries with Greater Glasgow and Clyde NHS Board (the Board) and reviewed the Scottish Government guidance 'Can I help you?'.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. An explanation of the abbreviations used in this report is contained in Annex 1. A list of the legislation and policies considered in this report can be found at Annex 2. Mr C and the Board were given an opportunity to comment on a draft of this report.

(a) The prison health centre's handling of his complaint forms from 1 to 3 November 2012 was unreasonable

5. Mr C completed an NHS feedback, comments or concerns form (feedback form) on 1 November 2012. He said that he had not received an explanation about why he had not received his medication. He also said that a nurse had been rude to him when he asked about this. He submitted a further feedback form on the same day. In this, he referred to blood tests.

6. Mr C also completed a prison health care complaint form on the same day. In this, he said that he had not received his medication. He also said that he had not received a response to a feedback form he had previously submitted and complained that a nurse had been rude to him. The prison health centre received the three forms on 2 November 2012.

7. On 3 November 2012, Mr C submitted five further feedback forms. The health centre received the forms on 5 November 2012.

8. The Health Care Manager (the Manager) in the health centre responded to Mr C's complaint form on 7 November 2012. The form on which she completed the response was headed '[H]ealthcare staff response to your feedback, comments or concerns'. The Manager apologised for the delay in providing his medication and said that she would speak to the staff who order medication. The bottom of the form the Manager completed stated, '[I]f you are unhappy with the response given and/or you want to make a formal complaint, please speak to a member of the healthcare team who will provide a complaints form and advice on the NHS Complaints Procedure'.

9. The Manager also completed another five copies of the same form on 7 November 2012 in response to the feedback forms Mr C had completed on 1 November 2012 and 3 November 2012. In the responses, she said that she had already offered an apology to Mr C for the failure to provide his medication. She again said that she would speak to pharmacy staff to ensure prompt ordering in the future and that he should put requests on nurse referral forms. It appears that two of the feedback forms Mr C completed between 1 and 3 November 2012 were not responded to.

Scottish Government guidance

10. The responsibility for the health care of prisoners was transferred to the NHS in November 2011. The Scottish Government guidance 'Can I help you?', which was updated in April 2012, set out best practice for relevant NHS bodies and health service providers to ensure their front line staff were trained, supported and empowered to deal with feedback, comments, concerns and complaints. The guidance said that feedback, comments, concerns and complaints from patients who receive NHS treatment within a prison health centre should be handled in accordance with this guidance. Paragraph 2.2.1 stated that:

'It should be noted that feedback, comments and concerns are not complaints. Complaints must be handled in accordance with the process outlined in Part 3.'

Paragraph 2.2.2 of the guidance went on to say:

'It is therefore necessary for staff to be able to distinguish between and identify issues that constitute a complaint using their judgement and

discretion and to make the person aware of the options and the distinct process for dealing with complaints. Individuals should have an opportunity to consider whether the issues they are raising should more appropriately be handled as a complaint. Arrangements should be made to ensure that patients, carers, families and visitors are aware of the procedures for providing feedback, comments, concerns and complaints and have access to the relevant supporting patient information leaflets such as "Making a complaint about the NHS" which will help to support them if they want to make a complaint rather than provide feedback.'

Paragraph 3.8.1.3 of the guidance stated:

'The member of staff receiving the complaint should involve the person making the complaint from the outset. They should establish whether they wish the matter to be dealt with under the NHS Complaints Procedure by explaining the process to them as far as they are able to.'

Paragraph 3.8.1.7 stated:

'Where a complaint is reasonably straight forward and non complex it may be managed without the requirement for a detailed investigation. If the complaint has been successfully resolved to the complainants' satisfaction within 3 working days and the outcome has been communicated to the complainant either by face-to-face, telephone or email communication, there is no additional requirement to send further written confirmation or carry out an investigation. Complaints that fall within this category must be recorded as normal to support organisational learning.'

The Board's guidance

11. The Board have sent me a copy of their guidance for prison health care centre staff on dealing with complaints that was in place at that time. This stated that prisoners may wish to make informal feedback, comment or suggestion about the health care provided without wishing to make a formal complaint. It said that staff should respond positively and appropriately and every effort should be made to achieve informal front line resolution. If the member of staff cannot resolve the matter, they should refer it to a more senior member of staff. The guidance said that this process is appropriate for matters that can be easily resolved because they require little or no investigation.

12. The guidance also stated that feedback forms should be responded to within seven days of a matter being raised. It said that where the prisoner

remains dissatisfied with the outcome of this process, they should be told of the right to pursue a formal complaint and should be provided with a complaint form without delay.

13. The Board's guidance then set out what should happen when a complaint is received. It said that when a communication is received in writing and the recipient believes that there may be scope for dealing with the matter informally through front line resolution, or where there is a lack of clarity about how the prisoner would like the matter to be dealt with, clarity should be sought from them about their intentions. If the prisoner wants front line resolution, a letter must be sent to the prisoner advising them of the intention to deal with the matter informally. A copy of this letter must also be sent to the Board. The guidance states that the process for dealing with informal feedback, comment and suggestions must then be followed.

14. The guidance stated that complaints should be acknowledged and scanned by the health centre in order that they can be sent to the Board within three days. An investigation report and draft letter must then be submitted to the Board within 15 working days of receipt of the complaint. Once approved, the response to the complaint is signed and issued by a senior manager at the Board.

The Board's comments

15. We asked the Board for their comments on this matter. In their response, they said that the feedback forms are processed within the health centre and once a response has been provided, they are copied to the Board electronically. They also told us that complaint forms are copied to the Board electronically on receipt. The matters complained about are investigated within the health centre and an investigation report and draft response are prepared. The responses are then signed by a senior manager in the Board once they have been approved.

16. The Board said that the complaint form dated 1 November 2012 had been replied to by the Manager as a feedback form in error on 7 November 2012. This was not in accordance with their procedures. The Board said that the response to the complaint form should have been prepared locally following investigation of the complaint and referred to a senior manager. They stated that this did not happen in Mr C's case and there was no excuse for the correct procedure not being followed.

17. In their response to a draft copy of this report, the Board said that when NHS Boards had taken over the responsibility for the health care of prisoners, there had been a clear direction issued to Health Boards by the Scottish Government to implement a system of feedback and complaint forms. They said that the procedure that was implemented did not require a prisoner to complete a feedback form before submitting a complaint form. However, they said that it was the case that when they responded to feedback, prisoners were advised of their right to submit a complaint. The Board also said that it had only come to light that the Manager had responded to Mr C's complaint when my office made enquiries about the matter in January 2013.

(a) Conclusion

18. One of the forms received from Mr C dated 1 November 2012 clearly stated that prisoners could raise a formal complaint by entering details on the form. This clearly should have been treated as a complaint when it was received by the Manager. In line with the Board's guidance, if the health centre considered that the matter could be dealt with through front line resolution or if they wanted to clarify how Mr C wanted the matter to be handled, they should have discussed this with him. If he had confirmed that he wanted the matter dealt with informally, a letter should have been sent to him to confirm this. This letter should have been copied to the Board.

19. I recognise that Mr C was submitting a large number of feedback forms to the staff in the health centre, which inevitably took up a lot of their time. However, Mr C's complaint of 1 November 2012 was not handled in line with the Board's procedures. Consequently, I uphold this aspect of his complaint.

20. In their response to our enquiries, the Board said that there had been problems in dealing with feedback forms and complaints when the prison opened in March 2012. They said that they had held two lengthy meetings with the health centre staff to explain the correct procedure to follow. They also said additional resources would be provided for dealing with feedback and complaints and that they would monitor complaints performance. The Board said that they considered that the problems had been addressed through senior management input and the provision of additional resources. In view of this, I am satisfied that the Board have taken steps to address this matter.

21. I have also noted that the Board's guidance states that complainants who want their complaint to be dealt with through front line resolution should have it dealt with under the process for dealing with informal feedback, comment and suggestions. The section of the guidance on dealing with informal feedback, comment and suggestions states that a response should be provided within seven days of the matter being raised. The Scottish Government guidance 'Can I help you?', which aims to assist all NHS bodies in fulfilling their obligations under the Patient Rights (Scotland) Act 2011, indicates that there are separate processes for handling informal feedback, comment and concerns; and for handling complaints. This guidance is clear that feedback, comments and concerns are not complaints and that complaints must be handled in accordance with a separate process. The process for handling complaints allows three working days for a complaint to be resolved, whereas the Board's guidance indicates that seven days are allowed for this. In view of this, I am concerned that the Board's guidance for handling complaints is not in line with the Scottish Government guidance.

(a) *Recommendations*

22. I recommend that the Board:	<i>Completion date</i>
(i) issue a written apology to Mr C for the failure to deal with his complaint in line with their complaints procedure; and	13 November 2013
(ii) ensure that the local process in place for the management of prison health care complaints is in line with the good practice outlined in the Scottish Government guidance 'Can I help you?'	20 December 2013

(b) Prisoners' access to Board complaint forms has been unreasonable

23. Mr C also complained that he had problems in obtaining a complaint form. We asked the Board how prisoners could obtain complaint forms in order that they could submit a complaint. In their initial response, the Board said that the prison health centre had a form called a nurse referral form. They said that these are readily accessible within the prisoner area and are to access anything within health care. They told us that the patient can complete the nurse referral form and place it within the health care medical confidential box in order to request a complaint form. They said that the nurse referral forms are collected on a daily basis and responded to daily.

24. The Board told us that on receipt of a nurse referral form requesting a complaint form, the patient would be sent a feedback form and confidential envelope, or, if was indicated that this form was not wanted, a complaint form would be sent. They said that the administration team leader controls this process in order that the forms being issued and received are logged. They also stated that where possible, an attempt would be made to meet the patient in the first instance to resolve the problem before it reached the written complaint stage.

25. The Board then wrote to us again stating that although this was the normal route, it was not the only way in which a prisoner could obtain a complaint form. They said that a prisoner could request one in person if they were attending the health centre for an appointment. They also said that the Board's contact details are on leaflets issued to all prisoners on induction to the prison and they can write to them direct with their complaint. They stated that they did not consider that it was necessary for a complaint to be made on a form, although it had been agreed with the Scottish Government that complaints would normally be made on a form.

26. The Board also sent us a copy of their leaflet on their complaints procedure for prisoners. This said that prisoners should first talk to the member of staff involved in their health care if they wanted to complain. They would then try to sort out the complaint on the spot. The leaflet said that if they did not want to speak to the member of staff involved in their care, they could ask to speak to a senior member of staff or complete a feedback form. The leaflet said that prisoners who were still unhappy could make a formal complaint either by letter or by completing a complaint form.

27. The Board's guidance for prison health care centre staff on dealing with complaints stated that a complaint form had been produced for prisoners to use. It stated that the date of issue of the form should be recorded at the foot of the front page in the space provided. It stated that a prisoner or anyone else does not have to complete a form, but for prisoners, this may be the most convenient way of writing. The guidance said that a letter must be processed in the same way as a complaint form.

(b) Conclusion

28. Since the NHS became responsible for prison health care, my office have received a number of contacts from prisoners throughout Scotland complaining

that they are having difficulties in accessing the complaints process. I previously reported on this matter in May 2013. I have also raised it with the Scottish Parliament's Health and Sport Committee. In response to my comments, the Scottish Government wrote to each of the NHS boards in Scotland and asked that they ensure that their complaints process was accessible to all prisoners.

29. The Board's leaflet on their complaints procedure for prisoners states that they can make a formal complaint by letter. In their response to a draft copy of this report, the Board said that they believed that complaint forms and the ability to register complaints via other means had always been available to prisoners. They also said that a new combined feedback and complaint form had recently been introduced.

30. However, during our investigation, we received information from the Board that indicated that prisoners normally had to complete a nurse referral form in order to request a complaint form. However, even when they did so, they only received a feedback form, unless they specifically stated that they did not want a feedback form.

31. It appears to me that in some cases, the Board used the feedback process as an additional level to the NHS complaints process. That restricted and over complicated prisoners' access to the NHS complaints process. It is clear that the Scottish Government guidance does not require NHS users to complete the feedback process prior to accessing the complaints process and the same should apply to those who receive NHS care and treatment whilst in prison.

32. I recognise that the Board have stated that a prisoner can request a complaint form in person if they are attending the health centre for an appointment. They can also write to the Board direct with their complaint. However, I have concerns that prisoners and, given the initial response we received from the Board, some of the Board's staff were not aware of this.

33. Based on this, I consider that prisoners' access to the Board's complaints process was restricted. In view of this, I uphold Mr C's complaint.

(b) *Recommendation*

34. I recommend that the Board:

Completion date

- (i) take steps to confirm that complaint forms are readily available for prisoners to access.

4 December 2013

35. 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.

Explanation of abbreviations used

Mr C	the complainant
The Board	Greater Glasgow and Clyde NHS Board
Feedback form	NHS feedback, comments or concerns form
The Manager	the Health Care Manager

List of legislation and policies considered

Can I help you? The Scottish Government guidance for handling and learning from feedback, comments, concerns or complaints about NHS health care services: April 2012

NHS Greater Glasgow and Clyde: Glasgow City Community Health Partnership: Prison Healthcare Complaints and Claims Direction Version 1.1 October 2012