

Scottish Public Services Ombudsman Act 2002

Report by the Scottish Public Services Ombudsman
of an investigation into a complaint against:

A General Practitioner (the first GP) in the Lanarkshire area

Complaint as put to the Ombudsman

1. The account of the complaint provided by the complainant, referred to as Mr M in this report, is that he attended his local Medical Centre on 10 May 2002 to be weighed by the Practice Nurse. Mr M required to be weighed before consideration could be given to providing him with a repeat prescription for Orlistat, which was to help him lose weight. While he was in the Practice Nurse's room, the first GP entered the room and said that as he had not lost sufficient weight no repeat prescription would be issued. A discussion ensued during which the first GP, without provocation, used offensive and unprofessional language towards Mr M. Mr M complained on 28 May 2002 but was dissatisfied with the first GP's response. He requested an independent review on 31 July 2002. The Primary Care Trust's [PCT] Convener refused an independent review and suggested that a further attempt be made to resolve the complaint through local resolution. The first GP wrote a further letter on 20 September 2002 in which he expressed regret for using the language in question and said he did not wish to offend Mr M. However, Mr M remained dissatisfied as he felt that other comments in the first GP's second letter implied that he had provoked the first GP into using the offensive and unprofessional language. Mr M indicated that he would accept the first GP's expression of regret if these other comments were removed from the first GP's letter but the first GP declined to amend his letter.

2. The matters subject to investigation were that the first GP:

- (a) used offensive and unprofessional language towards Mr M on 10 May 2002; and

(b) did not respond adequately to Mr M's representations about that.

Investigation

3. The statement of complaint for the investigation was issued on 14 November 2002. Relevant papers including Mr M's medical records were obtained and comments were received from the first GP. The Ombudsman's Investigating Officer took evidence from Mr M, the first GP, the Practice Nurse and the Practice Manager. I have not put into this report every detail investigated but I am satisfied that nothing of significance has been overlooked.

National Guidelines

4. Guidance issued in May 2001 by the General Medical Council (GMC) in its publication "Good Medical Practice" states:

"Successful relationships between doctors and patients depend on trust. To establish and maintain that trust you must:

- be polite, considerate and truthful;
- respect patients' privacy and dignity;
- ...

"Good communication between patients and doctors is essential to effective care and relationships of trust. Good communication involves:

- listening to patients and respecting their views and beliefs;
- giving patients the information they ask for or need about their condition, its treatment and prognosis, in a way they can understand, including, for any drug you prescribe, information about any serious side effects and, where appropriate, dosage ..."

5. Guidance issued by the then Scottish Office on the NHS Complaints Procedure issued in May 1999 includes:

"1.1 It is a term of service obligation on family health services practitioners to have in place and to operate practice-based

complaints procedures which comply with minimum national criteria
...

"1.4 Practices must:

- ...
- ensure that the person nominated to investigate the complaint makes all necessary inquiries such as interviews, if appropriate of the complainant, general practitioner(s) and practice staff
- ensure that an explanation is normally provided within two weeks (ie within ten working days of receipt of the complaint)"

Chronology

6. Correspondence relating to Mr M's complaint included the following:

28 May 2002

Mr M put his complaint to the PCT.

31 May

The PCT forwarded the complaint to the Practice.

5 June

The Practice Manager acknowledged Mr M's complaint.

18 July

The first GP responded to the complaint via the PCT including:

"... Mr [A] attends [a Consultant (the Consultant)] at Wishaw General Hospital and [the Consultant], quite rightly, suggested to him that he should take Orlistat to lose weight. He was being prescribed Orlistat by [the second GP] monthly after his weight check. Having completed 3 months of Orlistat he requested a repeat prescription of Orlistat without an appointment. I left a note for him to make an appointment for a weight check and review of his therapy, Mr [A] took exception to that suggestion.

"On 10 May he cornered me in the corridor and demanded an explanation, mumbling 'see you by appointment for a prescription, why?' He was persuaded to see the nurse for a weight check. I came into the room and the nurse gave me his weight ... I refused to give him another prescription as per datasheet recommendation. Mr [A] at that point threatened me that he would complain to [the Consultant]. I explained to Mr [A] that he was at liberty to complain to [the Consultant] and also 'I do not work for [the Consultant] and he can't dictate which prescriptions I sign'. At that point Mr [A] was saying something, which was not audible, but to me it did not sound like compliments. I suggested to Mr [A] to 'bugger off', which I believe means 'to depart' and 'to go away', according to my limited knowledge of the English language It appears to me that Mr [A] had taken that word to be offensive, and maybe in retrospect I should have said, 'go away' or 'depart' rather than 'bugger off'. The fact is I did say those words and I am happy to accept any punishment, but please remember the circumstances in which those words were spoken ..."

31 July

Mr M wrote to the PCT challenging a number of points in the first GPs letter of 18 July. He denied cornering the first GP in the corridor, having to be persuaded to see the practice nurse, making any inaudible comment and he disputed the first GPs assertion that he had threatened to complain to the Consultant.

20 September

After the PCT's Convener referred the complaint back for a further attempt at local resolution, the first GP wrote:

"... Having gone through the incident again I regret the use of the words 'bugger off', I am told that it is an offensive slang. I did not intend to offend Mr [A], I simply wanted him to 'depart' or 'go away'. I should have made a 'forceful expression of dismissal' or, perhaps, escorted him out of the premises rather than use the words that I did."

3 October

The PCT's Clinical Risk Manager spoke to Mr M who explained that he would accept the first GP's letter of 20 September if the last sentence was removed. The PCT's Clinical Risk Manager spoke to the first GP and he refused to change the letter.

3 October

Mr M asked again for an independent review. His letter included:

"... on the one hand [the first GP] makes a statement of regret of his words of Verbal Abuse, but then proceeds to shift the blame of the incident to myself in the last two phrases, as if he were the Injured Party, that scenario I will not countenance, I have repeatedly stated I did nothing to merit his outburst ..."

Mr M's evidence

7. **Mr M** told the Ombudsman's Investigating Officer that he saw the second GP once a month to be weighed before prescriptions for Orlistat were issued. Mr M knew he had to lose 5% of his body weight within the first three months of treatment and he believed he had done so. On 7 May he asked for a repeat prescription after difficulty rescheduling an appointment with the second GP. The following morning he visited the surgery to collect his prescription but was told by a Receptionist that the first GP had indicated that Mr M needed to be weighed before the prescription could be issued. He was not able to get an appointment with the first GP until the following week so, at the Receptionist's suggestion, he made an appointment to see the Practice Nurse on 10 May. Mr M was happy with this arrangement.

8. On 10 May while walking with the Practice Nurse to her consulting room Mr M saw the first GP and explained that the Practice Nurse was going to weigh him and asked if it was still necessary to make an appointment to see the first GP. The first GP replied "yes", and Mr M agreed to do so. Mr M and the Practice Nurse went into her consulting room. Shortly afterwards, the first GP entered the room and said to the Practice Nurse "What weight is he?" The Practice Nurse gave his weight and the first GP then asked Mr M what his weight had been last time he had seen the second GP. Mr M gave his weight from memory and the first

GP then said that he did not satisfy the criteria for a prescription for Orlistat because he had not lost sufficient weight. Mr M said he sighed and sat down. The first GP said, "Don't sigh like that to me". Mr M asked why he had been started on Orlistat if it was simply to be terminated and the first GP repeated that he had not met the criteria for continued use of this drug. Mr M then asked "Will you tell [the Consultant] or will I?" The first GP replied "I am not here to pander to [the Consultant], you can tell him". Mr M said, "Okay I will tell him that". The first GP opened the consulting room door, said "You can also tell [the Consultant] to bugger off and you bugger off too" and then left. Mr M said he was flabbergasted and upset by the first GP's comments. The Practice Nurse apologised for the GP's behaviour.

9. Mr M complained in writing to the PCT on 28 May. He was not satisfied with the first GP's response to his complaint and wrote to the PCT on 31 July disputing many aspects of the first GP's letter. The PCT's Convener decided that a further attempt should be made to resolve the complaint through local resolution. However, Mr M was also dissatisfied with the first GP's letter dated 20 September. Mr M felt that his name had been blackened by the first GP's comments and he felt strongly that he had not done anything to provoke or justify them. Furthermore, he had not done anything to justify a "forceful expression of dismissal".

The first GP's evidence

10. The **first GP** told the Ombudsman's Investigating Officer that he had known Mr M and his family for about 16 or 17 years. He had not seen Mr M particularly frequently over this period but felt that he got on well with him and there had been no previous concerns about his behaviour. He understood that Mr M had requested a repeat prescription of Orlistat on the 9 May. The first GP explained that it was standard practice for patients to be weighed before prescribing Orlistat. [The Ombudsman's Clinical Adviser confirmed that this is the appropriate approach to prescribing Orlistat.] Accordingly, the first GP noted on Mr M's repeat prescription request form that Mr M would have to be weighed before the prescription could be issued. The first GP understood that when Mr M came into the practice on 10 May to collect the prescription, he was not happy that he had to be weighed before the prescription would be issued and he disputed this with staff at the reception. The first

GP walked by and Mr M cornered him and asked why he had to be weighed. The first GP explained to Mr M that he would not issue the prescription unless Mr M was weighed. Mr M followed the first GP to the reception area where an appointment with the Practice Nurse was arranged. The first GP then left the reception area.

11. Subsequently, during Mr M's appointment with the Practice Nurse, the first GP went into the Practice Nurse's consultation room to establish Mr M's weight to decide whether to issue the prescription. The first GP asked the Practice Nurse what Mr M's weight was. As Mr M had not lost sufficient weight, the first GP told him he would not issue a prescription. Mr M questioned his decision to discontinue Orlistat and said he would complain to the Consultant. The first GP told Mr M that he could do so if he wished but explained that it was his responsibility to decide which prescriptions he signed. Mr M then mumbled something which the first GP was confident was not complimentary. Although he did not hear what was said he felt it was racial in nature. At that point the first GP told Mr M to "bugger off" and left the room. He regretted telling Mr M to "bugger off" but felt he was justified in forcefully asking Mr M to leave after Mr M had mumbled uncomplimentary comments.

12. The first GP said that the Practice Manager normally handled complaints. She acknowledged the complaint and if it related to administrative issues, she dealt with it. However, if the complaint related to clinical matters she normally discussed this with the relevant doctor and then either she or the doctor would respond. The Practice Manager passed Mr M's complaint to the first GP for him to respond. He accepted that Mr M's complaint was not strictly a clinical complaint and accepted that it might not have been appropriate for him to take the lead in responding to the complaint. The first GP acknowledged that his response to the complaint took six weeks. He felt that this was within the guidelines for responding to a complaint and he pointed out that this was over the holiday period. He acknowledged that the Practice's patient information leaflet indicated that they would aim to respond within ten days of a person raising their complaint but the first GP felt that in most cases this was not a practical time limit especially for complaints relating to clinical issues.

The Practice Nurse's evidence

13. The **Practice Nurse** told the Ombudsman's Investigating Officer she had not met Mr M before this incident and she was unaware of any previous concerns about his behaviour. She called Mr M into her consulting room, using an intercom, where she weighed him. The first GP entered the room and asked what Mr M's weight was. He checked Mr M's notes and told him he would not be issued with a repeat prescription. Mr M questioned the first GP's decision. The conversation escalated and voices were raised in competition with each other. However, the Practice Nurse felt that Mr M handled the conversation relatively well. He was neither particularly angry nor was he abusive. The Practice Nurse said that the first GP terminated the conversation by telling Mr M to "bugger off" and he said that the Consultant could also "bugger off". The first GP left the room and the Practice Nurse apologised to Mr M on the first GP's behalf.

The Practice Manager's evidence

14. The **Practice Manager** explained to the Ombudsman's Investigating Officer that she had responsibility for the initial handling of complaints. She arranged for complaints to be acknowledged but what happened next depended on the nature of the complaint. If the complaint was about reception staff, the Practice Manager would investigate. However, if the complaint was of a clinical nature it would be passed to the relevant doctor to respond. She acknowledged Mr M's complaint and passed it to the first GP for him to respond. From the Practice's computerised appointment system she was able to say that Mr M's appointment with the Practice Nurse for 12.00 pm on 10 May was made on the 10 May at 10.16 am. Mr M is noted as having arrived at the surgery at 11.54 am and was seen by the Practice Nurse at 12.01 pm. The appointment was shown as finishing at 12.09 pm.

Findings (a)

15. There are some inconsistencies between the accounts of the events leading up to the incident in the Practice Nurse's room. However, I do not consider these to be significant because Mr M's complaint is about the first GP's language during the incident in the Practice Nurse's room and, in my opinion, the accounts of the incident given by Mr M, the Practice Nurse and the first GP are broadly consistent. The first GP felt he acted

appropriately in refusing to issue the prescription and the Ombudsman's professional adviser has confirmed that the GP took the appropriate action. Mr M accepts that he sighed, sat down and asked why the treatment had been started if it was now to be withdrawn. The first GP said he explained the reason to Mr M. However, it seems that the conversation became more heated and soon became unproductive.

16. I believe that both the first GP and Mr M could have handled the situation in a more constructive manner. However, the first GP holds a responsible professional position and there was an onus on him to try to maintain a good relationship and facilitate good communication with his patient. He had known Mr M for many years and felt that he got on well with him. In this context, this disagreement was out of character and I believe the first GP should have taken steps to try to diffuse it. The conversation culminated with the first GP telling Mr M to "bugger off". The first GP said that he used this phrase because he was provoked by Mr M mumbling uncomplimentary comments which the first GP suspected were of a racial nature. I do not accept that Mr M's behaviour was provocative given that it is not clear whether Mr M mumbled something as he strongly disputes this and, even if he did, the first GP did not hear what Mr M said. Also, the Practice Nurse said that Mr M was neither particularly angry nor was he abusive. By using the language he did, the first GP escalated the disagreement between himself and Mr M rather than attempting to repair their relationship or to restore good communication between them as might have been expected in line with the GMC Guidance.

17. The first GP said he did not appreciate that the language he used was offensive and it was only after Mr M complained that he became aware that the phrase was offensive slang. At that point the first GP expressed regret for using the phrase and said he did not wish to offend Mr M. In my opinion, if the first GP did not appreciate that the language he used was offensive, then it would have been reasonable to expect him to apologise to Mr M for inadvertently using offensive language. However, the first GP did not take the opportunity to do so. Additionally, Mr M indicated that he was prepared to accept the expression of regret in the first GP's letter of 20 September as resolving the complaint, provided the first GP deleted the comments that he was justified in forcefully

dismissing Mr M. I believe this was a reasonable suggestion from Mr M and I am disappointed that the first GP did not take that opportunity to resolve the complaint. In my opinion this type of language is obviously unprofessional. Accordingly, I uphold the complaint that the first GP's language was offensive and unprofessional and I now **recommend** that the first GP makes an unqualified apology for it.

Findings (b)

18. There are two areas of concern about the first GP's response to Mr M's complaint. Firstly, it took a long time. The first GP accepted that his response to Mr M's complaint took six weeks but indicated that he felt that this was within the guidelines for responding to the Primary Care Trust on a complaint. Guidance on the NHS Complaints Procedure (paragraph 5 of this report) says that Practices should aim to reply within ten working days which is the target time stated in the Practice's patient information leaflet. The first GP felt that in most cases this was not a practical time limit. I accept that in some complaints there may be reasons that make it difficult to meet the ten day target for responding to a complaint, however, there appears to be no mitigating reason in this case. It is a term of service obligation that a GP operates a practice based complaints procedure which complies with minimum national criteria including the ten day target for responding to complaints. I consider the delay in responding to Mr M's complaint to be unreasonable. I **recommend** that the Practice reviews its complaints procedure to ensure that, wherever possible, complaints are responded to within the ten day target period.

19. Secondly, at no point during the investigation by the Practice into Mr M's complaint did anyone ask the Practice Nurse for her recollection of the incident between the first GP and Mr M as required by the guidance on the NHS Complaints Procedure. In Mr M's case, the complaint was not primarily about the first GP's clinical care. It was about the first GP's behaviour and language. By passing the complaint to the first GP to investigate, the Practice was expecting the first GP to investigate his own behaviour. The first GP did not speak to the Practice Nurse before responding to Mr M's complaint because he was clear in his mind what had happened during the incident. The first GP's recollection of the incident was different from Mr M's description of the incident and was

subsequently disputed by Mr M. The Practice Nurse was the only person who might be able to clarify the discrepancies between the first GP's and Mr M's accounts. Failure to seek her comments meant that in effect there was no investigation into Mr M's complaint and Mr M could legitimately feel that his complaint had not been fairly or fully considered. For this reason I conclude that this aspect of the Practice's handling of Mr M's complaint was unsatisfactory. On reflection the first GP has accepted that it might not have been appropriate for him to take the lead in responding to Mr M's complaint. I **recommend** that the Practice reviews its complaints procedure to ensure that where the facts of a complaint are disputed, the complaint is investigated fully by an appropriate member of the Practice staff who was not a party to the complaint.

Conclusions

20. I have set out my findings in paragraphs 15 to 19 above. The first GP has agreed to my recommendation in paragraph 15 to apologise to Mr M for his language and to my recommendations in paragraphs 18 and 19 to review the Practice's complaints procedure. He has asked me to convey through my report – as I do – his apologies to Mr M for the shortcomings I have identified.

Gillian Stewart
Acting Investigations Manager
duly authorised in accordance with
paragraph 11 of Schedule 1 to the
Scottish Public Services Ombudsman Act 2002

27 June 2003