

Scottish Public Services Ombudsman Act 2002

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

Grampian University Hospitals NHS Trust (the Trust)

Complaint as put by Mrs V

1. The account of the complaint provided by Mrs V was that in February 2001 her son (then aged 13) was put on the waiting list for orthodontic treatment at Dr Gray's Hospital, Elgin. Mrs V subsequently learned that the waiting time for this treatment is approximately three and a half years. On 17 August, Mrs V complained about the waiting time; she asked for an explanation or remedy for the situation. The Chief Executive of the Trust replied on 20 August apologising for the lengthy waiting time. He acknowledged that this was unsatisfactory and said that staff had been working to improve the situation by trying to attract further funding which would allow the Trust to expand the service. On 23 August Mrs V sought an independent review of her complaint. The Convener refused her request on 21 September on the ground that this was primarily a resource issue for which a reasonable explanation had been given.

2. The matter investigated was that the Trust was providing an unsatisfactory orthodontic service to Mrs V's son at Dr Gray's Hospital and was not taking adequate steps to rectify the matter.

Investigation

3. This investigation began in October 2001 and was still in progress when the office of the Health Service Commissioner for Scotland ceased to exist on 22 October 2002. I therefore assumed responsibility for the investigation under the terms of Paragraph 4 of Schedule 7 to the Scottish Public Services Ombudsman Act 2002. The Trust's comments were obtained and relevant documents were examined. My Investigating Officer took evidence from the Service Manager for Surgical Specialities (the Service Manager). I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked.

Jurisdiction

4. I am empowered to investigate administrative actions taken by or on behalf of public bodies, including NHS bodies, listed in Schedule 2 to the Scottish Public Services Ombudsman Act 2002. Section 7(1) of the 2002 Act provides that I may not question the merits of discretionary decisions of public bodies taken without maladministration.

Chronology of events

5. The main events during the Trust's provision of its orthodontic service to Mrs V's son are as follows:

16 August 2000 The Service Manager produced a paper on the Trust's Orthodontic Service outlining proposals to introduce locum sessions at Dr Gray's Hospital. The paper included:

'The demand for Orthodontic care in Grampian has increased in recent years. This has resulted in an increase in waiting times for assessment and for treatment ...

'In 1999 agreement was reached with Grampian Health Board to appoint a part-time Consultant Orthodontist (5 sessions per week). The increased number of clinical sessions would ensure improved quality of service to patients in Moray by reducing waiting times for appointments and treatment. To date adverts for the post have failed to attract any applicants.

Current Service

'The current Orthodontic Service is provided by two Consultant Orthodontists from [the Trust]. The service provides treatment for patients of all ages ... throughout Grampian and on an outreach basis to Orkney and Shetland. There are seven peripheral locations in Grampian (excluding Dr Gray's) where four sessions per week operate on a rotational basis.

'Two sessions per week (one day) are staffed by [Trust] Consultants ... and provided at Dr Gray's. These sessions represent a reduction from the original four sessions per week, necessary to allow the Head of Service ... more time in Aberdeen to deal with the insatiable demand for service there ...

Key drivers for change

'The number of new patients awaiting a first time out-patient appointment in Elgin [at 28 June 2000] is 702. The waiting time for a first new appointment in Elgin is 182 weeks (3.5 years). ... Following a first appointment patients currently face a wait of up to three years before treatment can commence. The present Locum Consultant ... is currently on contract until the end of July 2000 [and he] has indicated that he wishes to cease his visiting commitment to Elgin ...

Proposal

'To employ a Locum Consultant Orthodontist who will provide a service to Elgin for 2 days per week (4 sessions) and for a period of six months and (2) to employ a Locum Consultant Orthodontist who will provide a service to Elgin for a further 3 months and for the purpose of seeing new patients only.

'For a period of six months a Locum Consultant Orthodontist would provide a service at Dr Gray's which [means] ... an additional 8 new and 20 return patients could be seen over the course of the two additional sessions (588 patients in six months) ... [and] ensures continuation of service during which time the vacant post could be re-advertised and a suitable applicant sought.

'In addition, a Locum Consultant employed to do five sessions per week (4 clinical and one administrative) and with the sole purpose of seeing new patients would reduce the number of patients waiting for a first time appointment. Based on 12 patients per session, the number of patients seen in the three month period would be 576 ...

Conclusions

'Approval is sought to proceed with the recruitment of Locum Orthodontic Consultants who would treat approximately 1000 patients from our orthodontic out-patient waiting list ...

'It must be emphasised that if this proposal is successful and if Locum Staff can be appointed, it will provide a temporary solution to the problems currently faced by this Service ...

'In the meantime, the permanent part-time vacancy should be re-

advertised with haste and, if attempts to recruit are unsuccessful at this third attempt, then serious consideration must be given to other ways of providing a service in Elgin. These might include:

The appointment of a sub-consultant grade to the Service in Elgin, supported by Consultant sessions in Aberdeen.

The appointment of a third full-time Consultant in Aberdeen ...

... a managed clinical network with Highland with the intention of increasing consultant cover at Elgin ...'

October The Trust appointed a Locum Consultant Orthodontist to work full-time in Elgin for a ten-week period.

30 January 2001 The Service Manager wrote to the Commissioning Manager at Grampian Health Board saying the Locum had reduced the waiting times for first appointments from 150 weeks to 2 weeks. A full time Consultant Orthodontist post was soon to be advertised but, given that it could take six months before a suitable candidate took up post and with referral trends at that time, the waiting list was likely to reach nine months during the six month period. She therefore requested funding to appoint a locum in the meantime.

19 February Grampian Health Board's Commissioning Manager replied saying there were no available funds.

27 March Christopher's dentist wrote to Dr Gray's Orthodontic clinic saying that Christopher had been examined in Dr Gray's orthodontic clinic on 26 October 2000 when treatment options were discussed but the decision made to take this no further. Christopher now wanted to be reconsidered for treatment as he was not happy with the appearance of his teeth.

16 May A Consultant Orthodontist replied that Christopher had been placed on the waiting list for treatment.

17 July Mrs V wrote to the Trust complaining about the waiting times for orthodontic treatment. She said she had been advised that the waiting time was 3 years and 4 months.

20 August The Chief Executive responded acknowledging that the service was

unsatisfactory and said that staff were attempting to obtain further funding to expand it. The letter included:

'... As you have already been informed the current waiting time for treatment at Dr Gray's Hospital is approximately three and a half years. The consultants who provide this service at Dr Grays only do so on one day per week and we acknowledge that this is quite unsatisfactory. Trust staff have been working to improve the situation by trying to attract further funding which would allow us to expand this service, however to date this has not been successful.

'... I understand your frustrations and I apologise for the lengthy waiting time. I would like to reassure you however that the Trust is continuing to work with Grampian Health Board to improve this service ...'

Trust's response to the Ombudsman's Statement of Complaint

6. In his written response to this complaint the Trust's **Chief Executive** said in part:

'... the problem for the Trust is a lack of adequate funding to expand the service by creation of an additional Orthodontic Consultant post in Moray ... [which] we have been attempting to resolve ... for some time. Some progress has been made in the provision of Community Orthodontics facilities and we hope in conjunction with our colleagues in the Grampian Primary Care Trust that an appointment of a Community Orthodontist may be made within the next few months. However the issue will not be resolved fully until we are in a position to provide a full consultant post in Elgin and at present we do not have resources to enable us to do this. I am also advised by our Head of Service that even if we were to advertise such a post it is unlikely that applicants would be available because of the national shortage of Consultant Orthodontists.'

Evidence of the Service Manager

7. **The Service Manager** said that a satisfactory orthodontic service was one that provided a new patient appointment within three months of a first referral from a general dental practitioner and ideally subsequent treatment should commence immediately afterwards. However, adequate resources and space were needed before a satisfactory service could be put in place. A Royal

College guideline suggests there should be 1:200,000 consultant orthodontist per head of population but the Trust was in excess of that at 1:280,000. The Trust provided a service to the whole Grampian area with a total population in excess of 600,000 and whose geographical spread caused difficulties.

8. The Service Manager explained that the situation had arisen out of events from 1998. In 1998, the Trust-wide service was provided by two senior and very experienced Consultant Orthodontists based in Aberdeen; a Specialist Registrar in a part-time training post; and an overseas student whose funding was provided by another government. At the end of 1999, the student was unexpectedly recalled and the Trust lost 10 sessions of clinical time per week. The student's patients who had already started on treatment were transferred to the Consultant Orthodontists with the result that they were unable to see new patients until treatment for those patients had been completed. One of the Consultant Orthodontists then retired and it was between three and six months before his replacement started which made the situation deteriorate further. The decision to appoint a part time Consultant Orthodontist at Elgin (agreed by Grampian Health Board in 1999) was based on unsatisfactory waiting times in Elgin and also the time it took the Consultant Orthodontists to provide a visiting service which also had a knock-on effect on the service provided at Aberdeen. The Trust had advertised three times in an attempt to fill the post but did not attract a suitable applicant.

9. In October 2000, the Trust appointed a full time Locum Consultant Orthodontist in Elgin for a period of ten weeks. She reduced the waiting time for first appointments from 150 to 2 weeks. She also reduced waiting times for those who had not yet commenced treatment but were waiting to do so and those who were in the middle of treatment. The Locum Consultant Orthodontist cover for that ten week period showed there was a need for a continued Consultant Orthodontic presence at Elgin, and her letter of 30 January 2001 to Grampian Health Board attempted to persuade them to release funding for another Locum. The Consultant Orthodontists used to provide a service at Elgin of two sessions a week but this was reduced to one in March 2001 because of worsening waiting times in Aberdeen.

10. Subsequently in June 2002 the Chief Executive informed the Service Manager that there would be no funding for the post in Elgin. However, the

Trust had secured funding for a full time Specialist Dental Practitioner who would practice from Dr Gray's Hospital. The Specialist Dental Practitioner would be unable to undertake some of the more specialised treatments but would still have a significant impact on waiting times and Consultant Orthodontic services and support from Aberdeen would continue. The Service Manager believed this was a good compromise because of the national shortage of orthodontists and the Trust's inability to attract candidates because of location. However, by June 2003 despite being advertised three times, the post had still not been filled. The Trust were looking again at employing a Locum Consultant Orthodontist for an 8 to 10 week period to reduce the waiting time for first time appointments.

Further Considerations

11. In investigating this complaint my Officer also explored the related issue of whether Christopher had been assessed in accordance with the Index of Orthodontic Treatment Need (IOTN). The index provides the criteria for allocating patients in terms of the treatment waiting list using a grading system of 1 (no treatment required) to 5 (treatment required).

12. My Officer received assurances that an assessment had been carried out and that Christopher's IOTN index number was 3A. Grade 3 is defined as 'borderline need'. The policy of some NHS bodies is to offer referral to hospital for orthodontic treatment only to patients who score 4 or 5 on the IOTN.

13. I received further advice from my clinical adviser following his examination of Christopher's records. He was of the view that Christopher's condition was mild, that he did not appear to have been graded wrongly, and that the condition could be treated up to the age of 20.

Findings

14. Mrs V complained about the waiting times for orthodontic treatment at Dr Gray's Hospital in Elgin and felt that the Trust were not taking adequate steps to rectify the matter. The Chief Executive agreed with her that the waiting time was unsatisfactory and said that the Trust did not have the available resources to improve the service.

15. The Service Manager described how the unsatisfactory service had arisen. In her paper dated 16 August 2000 she set out proposals to resolve the problem of the three and a half year orthodontic waiting list. She recommended that the

permanent part time vacancy which had been agreed with Grampian Health Board in 1999 but which had attracted no applicants be re-advertised quickly and, if recruitment to that post was not successful then she suggested that serious consideration had to be given to alternative solutions which she outlined in her paper. In October 2000 a full time Locum Consultant Orthodontist was appointed for a 10 week period which very successfully reduced the waiting time for first time appointments from 150 weeks to 2 weeks. In January 2001 the Service Manager sought funding to employ a locum to fill the probable six month gap before a full time Consultant Orthodontist was appointed in an attempt to prevent the waiting list rising again, however, there were no funds available. In March 2001 the Consultant Orthodontic service in Elgin was reduced from two sessions per week to one because of worsening waiting times in Aberdeen. Christopher was placed on the waiting list in May 2001. By June 2002 the Service Manager had been told that there would be no funding for the post in Elgin, however, the Trust had secured funding for a full time Specialist Dental Practitioner who would practice from Dr Gray's Hospital which would have a significant impact on waiting times. Unfortunately the Trust was unable to fill this post.

16. I am persuaded that this was, in the main, a resource allocation issue which the Trust had discretionary powers to make. As indicated in paragraph 4 above I cannot question discretionary decisions taken without maladministration. There is no evidence of maladministration given that it is clear that the Trust identified inadequacies in the Orthodontic Service before Christopher was put on the waiting list and that the Trust had been actively attempting to address the problem in a number of ways from 1999 onwards.

17. I now turn to the related issue of whether or not Christopher suffered an injustice as a result of the delay. Christopher's condition was not of a serious nature and clinically there would have been no disadvantage in delaying his treatment. In these circumstances I do not consider that he has suffered an unremedied injustice. I therefore do not uphold the complaint.

Conclusions

18. I have set out my findings in paragraph 14 to 17.

Professor Alice Brown
Scottish Public Services Ombudsman

3 February 2004