

Case 200500518: A Dental Practitioner in the Greater Glasgow and Clyde NHS Board area

Introduction

1. On 9 June 2005 the Ombudsman received a complaint from a woman (referred to in this report as Mrs C) that her Dentist (the Dentist) had been treating her as a private patient since 1999 without her full knowledge.

2. Mrs C also complained that she had asked the Dentist on many occasions to provide her with replacement crowns but that he had taken no action.

3. The complaints from Mrs C which I have investigated concerned the Dentist's:

(a) failure to advise Mrs C that she was being treated as a private patient; and

(b) failure to provide appropriate treatment in relation to two crowns on Mrs C's front teeth.

4. Following the investigation of all aspects of this complaint, I came to the following conclusions:

(a) partially upheld, see paragraphs 14 and 15;

(b) not upheld, see paragraph 22.

5. Specific recommendations the Ombudsman is making resulting from this investigation are that the Dentist should:

- i. take steps to act in accordance with the guidance from the General Dental Council (GDC) and provide patients with a written estimate and treatment plan where appropriate to avoid future misunderstandings;

- ii. take note of the need to keep full, accurate and contemporaneous records.

Background legislation

6. The National Health Service (General Dental Services) (Scotland) Regulations 1996 allow dentists to provide private treatment to NHS patients but only with the consent of the patient. Dentists must not advise the patient that treatment which is available on the NHS is only available privately nor should they mislead a patient about the quality of care and treatment available under the NHS.

7. The GDC is the body appointed by the UK Parliament to regulate dental practitioners. The GDC guidance on explaining treatment and costs includes:

‘3.6 It is the responsibility of a dentist to explain clearly to the patient the nature of the contract and in particular whether the patient is being accepted for treatment under a particular scheme, including the NHS, or under some other arrangement.

The charge for an initial consultation and the probable cost of the subsequent treatment must be made clear to the patient at the outset.

A written treatment plan and estimate will avoid misunderstandings and should always be provided for extensive or expensive courses of treatment. A dentist who obtains the patient’s agreement to these terms in writing is better placed to refute an allegation that a patient has been misled with regard to the nature of the contract or the type or cost of treatment provided.

...

Patients are entitled to an itemised account of treatment received and should normally be provided with one.’

(GDC Maintaining Standards, November 1997)

Investigation and findings of fact

8. The investigation of this complaint involved obtaining and reading all the

relevant documentation, dental records and complaint file. I obtained advice from the dental adviser to the Ombudsman. I made a written enquiry of the Dentist and I sought information from the NHS National Services Scotland (NHSNSS) about claims made by the Dentist regarding NHS treatment provided to Mrs C. These enquiries were appropriate in order that I could establish Mrs C's patient status while she received treatment from the Dentist. I have set out, for the two heads of Mrs C's complaint, my findings of fact and conclusions. A summary of recommendations is in paragraph 5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Dentist have been given an opportunity to comment on the draft of this report.

(a) Failure to advise Mrs C that she was being treated as a private patient

9. Mrs C first raised her concerns with the Dentist in a letter dated 10 January 2005. She mentioned she had been a patient at the practice for at least 11 years and asked for confirmation of her patient status. She had registered as an NHS patient but had been asked to sign a form after her check-ups as a private patient. When she questioned this, she was told that the Health Service did not allow for an examination and scale and polish to be carried out at the same time. When she queried the matter again, she was told that the scale and polish which had been provided were more thorough than those carried out under the NHS.

10. The Dentist wrote to Mrs C on 14 January 2005 and explained that he had been treating her as a private patient since November 1999 and on each occasion she had been asked to sign a consent form that clearly indicated which items of treatment were private.

11. During the local resolution stage of Mrs C's complaint, further correspondence passed between her and the Dentist. Mrs C maintained that at no time during her treatment was she told by the Dentist that she was being transferred from the NHS to a private patient. The Dentist maintained that Mrs C had signed numerous consent slips for treatment from 1999 onwards and that, as far as he was aware, he had made her aware of which treatment had been provided on a private or NHS basis.

12. Mrs C's dental records indicated the dental treatment which Mrs C received from 1 October 1994 to 15 November 2004. They also contained copies of numerous receipts from 1 November 1999 to 20 August 2004 signed

by Mrs C, which included a declaration that the patient desires to be a private patient and undertakes to pay the fees incurred. The receipts also contained information that patients are asked to sign the receipt to avoid any misunderstandings. The records do not contain any entries that Mrs C's patient status was discussed by her and the Dentist.

13. During the investigation, the Dentist told me, in a letter dated 9 December 2005, that he had discussed treatment options with Mrs C and offered advice regarding the expected appearance and costs of her proposed dental treatment. Mrs C had made it quite clear that she preferred the private option for treatment to her crowns. She had told him that her existing crowns were provided through the NHS and that she was not happy with their appearance. He also said that he advises all patients to consider their choice of treatment and when they return for their next appointment they should confirm that what they had initially decided was still correct. He also said that the onus is on the patient to request appointments for treatment which they are sure they want. In response to the draft investigation report the Dentist maintained that all patients are provided with a treatment plan/estimate form which provides information on the treatment to be undertaken and the form is subsequently used as a receipt for any monies paid. If no payment was made at the time then the form would serve its purpose as a treatment plan/estimate. He added that every patient receives a clear oral report on their treatment needs and the treatment options available and this is then confirmed in the treatment plan/estimate.

Failure to advise Mrs C that she was being treated as a private patient: conclusions

14. Mrs C and the Dentist have differing views as to whether she was informed at times that the dental treatment which she received was on a private basis or under the NHS. Mrs C maintains that the matter was not discussed at any appointments, yet the Dentist recalls that he would have explained which treatment was being provided privately or under the NHS. The only documentary evidence available which might lend weight to the fact that private treatment was agreed and provided was reference to private treatment on the receipts which Mrs C signed, which included a declaration that the patient desires to be a private patient. It would seem reasonable to form an opinion that, if a patient had concerns when presented with a receipt clearly stating private treatment, then the onus would be on the patient to raise any concerns with the Dentist at the time. I note Mrs C said she raised this with the Practice on two occasions but there is nothing in the dental records which would confirm

this and whether it was purely on the occasions where a scale and polish was provided.

15. However, the guidance from the GDC states that the Dentist has a responsibility to explain clearly to the patient the nature of the contract and, in particular, whether the patient is being accepted for treatment under a particular scheme, including the NHS, or under some other arrangement. Although it is clear from the evidence that Mrs C has signed receipts with a declaration that she desires to be a private patient, there is no documentary evidence that the nature of the contract and the treatment was clearly explained and that a written treatment plan and estimate were provided. It is recognised that in this particular case the episodes of care related to one-off treatment rather than a programme of treatment. However, given the number of episodes of private treatment covering the period 1 November 1999 to August 2004, I partially uphold the complaint, to the extent that there is no written evidence that a written treatment plan and estimate were provided. The Ombudsman recommends that the Dentist takes steps to act in accordance with the guidance from the GDC and provide patients with a written estimate and treatment plan where appropriate to avoid future misunderstandings.

(b) Failure to provide appropriate treatment in relation to two crowns on Mrs C's front teeth

16. Mrs C complained to the Dentist that she had been unhappy with the crowns which had been replaced following the birth of her daughter in 1994. The crowns had been falling out almost every year for many years. She had recently sought specialist advice from a dental surgeon and he had concluded that she had major dental problems which required urgent corrective action. The cost of the corrective action varied between £2145 and £4220. Mrs C felt that, had the problems been diagnosed at an earlier date, the crowns could have been treated without the need for extraction.

17. During local resolution, the Dentist responded that there were entries in the dental records relating to the condition of the crowns from 19 June 2003. It was noted on 14 January 2004 that the crowns would be replaced soon but the Dentist could not explain why Mrs C had not returned to have them replaced.

18. Mrs C wrote to the Dentist on 20 April 2005, after she had reviewed a copy of her dental records. She noted that on three occasions she had asked to join Denplan (private dental payment scheme) because the Dentist had said the

costs of privately made crowns were considerable. The Dentist had never given an explanation as to why Mrs C could not join Denplan.

19. The Dentist responded to Mrs C that any work required on the crowns would be classed as existing treatment to be completed prior to joining Denplan and would not be covered by Denplan. The Dentist also said that Mrs C was not prevented from joining Denplan, but if she had made it clear she wished to do so then the paperwork would have been completed.

20. As mentioned in paragraph 8, I made enquiries of NHSNHS in order that I could establish Mrs C's patient status while she received treatment from the Dentist. I did this because the Ombudsman can only consider complaints about dental treatment which has been provided under the NHS and not private treatment. The adviser reviewed the dental records and commented on the treatment which was provided under the NHS. The adviser had a slight concern about the Dentist's interpretation that two NHS x-rays taken on 16 January 2004 were described as 'AOK'. The adviser formed the opinion that the x-rays confirmed failure of the crown and that the Dentist's interpretation was incorrect.

21. The Dentist responded to my enquiry about the x-rays and explained that, as far as he could recall, the spaces on the x-rays were filled by dental cement and did not, in his opinion, show fractures of roots or caries (decay). Clinically, he was not aware of any caries at the crown margins. He accepted that the crowns were not sitting properly onto the roots and the x-rays indicated that the post crowns required replacement. The adviser commented that, although the Dentist recalled that the spaces which were clearly visible on the x-rays were filled by dental cement and he could not recall caries, radiographically he did not think it was absolutely certain that was the case. He noted, however, that the Dentist had acknowledged that the crowns were not sitting properly onto the roots and that the x-rays indicated that the post crowns required replacement. The adviser commented on the importance for a dental practitioner to maintain full, accurate and contemporaneous record keeping, including appropriate reporting of radiographs taken of patients.

Failure to provide appropriate treatment in relation to two crowns on Mrs C's front teeth: conclusions

22. As a result of the clinical advice which I have received, which related solely to the interpretation of the NHS x-rays taken on 16 January 2004, I am of the view that the Dentist provided reasonable comment on this point and, therefore,

I do not uphold this aspect of the complaint. The Ombudsman recommends that the Dentist takes note of the adviser's comments with regard to record keeping.

30 May 2006

Explanation of abbreviations used

Mrs C	The complainant
The Dentist	The Dentist responsible for Mrs C's dental treatment
NHSNSS	NHS National Services Scotland, who deal with claims from dental practitioners for treatment provided under the NHS
GDC	General Dental Council