Scottish Parliament Region: Mid Scotland and Fife

Case 200500828: Forth Valley NHS Board

Summary of Investigation

Category

Health: Hospital; Communication and staff attitude

Overview

The complainant raised concerns about a consultant surgeon's decision not to perform the operation which he had intended to do and about staff attitudes.

Specific complaints and conclusions

The complaints which have been investigated are that:

(a) a surgeon cancelled an operation without proper cause (*not upheld*);
(b) a hospital nurse's attitude at admission and discharge was inappropriate (*no finding*);
(c) the Board's two replies to the complaint were insulting and inadequate (*not upheld*);
(d) the surgeon's lack of record keeping about his decision to cancel the operation was inappropriate (*upheld*); and
(e) some of the hospital's communication procedures were inadequate (*upheld*).

Redress and recommendations

The Ombudsman recommends that:

(i) the surgeon review his record keeping in line with General Medical Council guidance; and
(ii) the Board improve communication to staff in the hospital's Admission and Discharge Lounge.

The Board have accepted the recommendations and have taken steps to action them.

Main Investigation Report

Introduction

1. On 22 June 2005 the Ombudsman received a complaint from a man (referred to in this report as Mr C) that his wife (Mrs C) had been denied treatment by a hospital (the Hospital) within Forth Valley NHS Board's Acute Operating Division.

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

(a) a surgeon cancelled Mrs C's operation without proper cause;

(b) a nurse's attitude at Mrs C's hospital admission and discharge was inappropriate; and

(c) the Board's two replies to Mr C's complaint about the above were insulting and inadequate.

3. As the investigation progressed I identified two other issues. Therefore, the investigation additionally considered whether:

(d) the surgeon's lack of record keeping about his decision to cancel the operation was inappropriate; and

(e) some of the hospital's communication procedures were inadequate.

Investigation

4. I was assisted in the investigation by two of the Ombudsman's clinical advisers, one of whom is a senior consultant surgeon. Their role was to explain, and give an opinion on, the complaint. We examined the papers provided by Mr C, the Board's complaint file and the clinical records relating to Mrs C at the Hospital and at another hospital which is not the subject of the complaint. The Board's detailed replies to my enquiries, and the NHS complaints procedures, were also examined. To identify any gaps and discrepancies in the evidence, the content of some of these papers was checked against information elsewhere on the files and also considered against my own and the advisers' knowledge of the issues concerned. I am, therefore, satisfied that the evidence has been tested robustly. In line with the practice of this office, the standard by which the complaint was judged was whether the events were reasonable, in the circumstances, at the time in question. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Finally, Mr C and the Board were given an opportunity to comment on a draft of this report.

(a) A surgeon cancelled an operation without proper cause

(b) A hospital nurse's attitude at admission and discharge was inappropriate

(d) The surgeon's lack of record keeping about his decision to cancel the operation was inappropriate and

(e) Some of the hospital's communication procedures were inadequate

5. I turn now to the events in question in relation to the above four of the five complaints. I would normally cover the aspects separately. In this case the issues are so inter-linked that it makes sense to tell Mrs C's story chronologically, covering the issues as they arise.

6. Mrs C was under the care of a consultant physician (whom I shall call Consultant 1) at a hospital (not the one which is the subject of the complaint). She had had shortness of breath since October 2004, and it had been established that she had fluid in a lung, but investigations had been unable to diagnose its cause. He had referred her to the Hospital, where a consultant surgeon (Consultant 2), who is one of the subjects of the complaint) was to perform a thoracoscopy (an examination by means of a telescope inserted through the chest wall) to see if a diagnosis was possible.

7. On 15 March 2005 Mr and Mrs C attended a pre-admission clinic at the Hospital and were given some information about what was going to happen. As they had further questions, the clinical notes record, '…attending at 10.30 on day of admission as wishes to speak to [Consultant 2]'. In his complaint to the Board, Mr C said that his, and his wife's, understanding was that on admission, Consultant 2 would explain to them both the procedure he was going to perform and that a doctor and a nurse had both told them this at the pre-admission clinic because they had specifically asked when they would have the chance of such a discussion with Consultant 2. A note of a telephone call from Mr C to the Board on 22 March records Mr C as saying that, because a doctor and a nurse at the clinic had been unable to answer all his questions, they had advised him that there would be the opportunity to discuss these with Consultant 2.

8. On the day of admission (21 March 2005) Mr and Mrs C arrived promptly so that they could speak to Consultant 2 and waited in the Admission and Discharge

Lounge (the Lounge). After making some introductory remarks, a nurse (whom I shall call the Nurse) told Mr C to leave. Her account was that she asked if he would mind leaving as the Lounge was very busy (20 admissions planned, 15 of which were due at around the same time as Mrs C – and only 16 chairs). Her account also said that relatives had been able to wait with patients in the Lounge until, after recent discussion within the Hospital, this practice had changed. She also said that she felt Mr C's manner to be angry and intimidating and that he said he had been told he would be able to speak with Consultant 2, but it became clear that he had no actual appointment time. The Nurse left the Lounge to contact Consultant 2's secretary, and shortly afterwards Consultant 2 appeared and met Mr and Mrs C in a private room. She said she had not been rude to the couple.

9. Mr C's account is that after being told to leave, he explained he was there to see Consultant 2, but the Nurse said he was too busy to see him, at which Mr C insisted he would not leave until he had spoken to someone about the operation. He considered the Nurse's reaction to him and his wife to be unfriendly and inappropriate and he told me that his manner had not been aggressive or angry.

10. Consultant 2's account of the meeting on 21 March was that on entering the room, he was taken aback by Mr C's aggressive manner. Mr C criticised the lack of information they had had about Mrs C's condition, to which Consultant 2 replied that that was a matter for Mrs C's own consultant, and that he was present to answer questions about the procedure which he would be performing the next day. Consultant 2 said he considered that the whole meeting was difficult. For example, Mr C told his wife (in front of Consultant 2) that he did not want Consultant 2 as her surgeon. Consultant 2 explained the procedure and also gave some information about Mrs C's condition, for example that occasionally no cause could be identified in these cases and that he felt it was most likely to be benign because there had been no malignant cells so far. He said that Mrs C indicated that the information was helpful.

11. Consultant 2's comment on the lack of malignant cells was correctly based on Consultant 1's clinical records (which had been copied to Consultant 2 and so now formed part of the Hospital's records). These showed the result of a laboratory test (which was done in December 2004 at Consultant 1's request) as, 'Malignant cells are not seen'. However, the clinical records also show a letter, dated later in

December 2004, in which Consultant 1's specialist registrar wrote to tell Mrs C's GP that she had told Mrs C of this test result, adding, 'We did discuss again that the most likely diagnoses are malignancy or TB'. As the possibility of malignancy had been raised with Mrs C, the advisers consider that it was, therefore, probably unhelpful for Consultant 2 to have raised the possibility (and, presumably, the couple's hopes) of benignancy. In his response to the Board’s two complaint responses, Mr C criticised Consultant 2 for not getting the diagnosis right, saying that the diagnosis which his wife later received from elsewhere confirmed that he had been right not to trust Consultant 2. I should say here that at no time did Consultant 2 make a diagnosis: he merely gave an opinion which was correctly based on Consultant 1’s clinical records.

12. Mr C's account of the meeting on 21 March was that Consultant 2's manner was cold and aggressive and that, to get answers to her questions, Mrs C had to show complete subservience. In his original complaint to the Board Mr C wrote, 'I take my share of responsibility here for this. [Consultant 2] and I simply both reacted to each other, in an inappropriate manner'. For Mr C's part, he indicated that this was because of anxiety about his wife.

13. On leaving the meeting, the Nurse asked Mr C if matters were now alright, to which Mr C said he was unhappy and would be telling his MSP. (Mr C later said that the anaesthetist visited Mrs C on the ward later that day and gave Mrs C full and helpful information about the forthcoming operation.)

14. Having received Mr C’s complaint on 21 March, the MSP requested the Hospital’s comments that lunchtime. Consultant 2 learned of this on his arrival early on 22 March, the day of the operation. He said that he realised that the lack of trust (which had been shown by Mr C at the meeting on 21 March and which had also been indicated by his making an immediate approach to a MSP) was likely to make his own relationship with Mrs C, and his relationship with them as a couple, very difficult. He considered it unwise to perform operations in situations of such lack of trust and in an atmosphere of complaint. Therefore, he felt he could not perform the operation that morning but that, if matters could be resolved, he was prepared to reschedule it for 24 March. When the MSP contacted the Hospital, the Board’s surgical unit clinical co-ordinator (whom I shall call Administrator 1) became involved, as did a patient relations officer (Administrator 2) from the

Board's complaints service. Administrator 1 said that she explained the situation to Mrs C in a private room, Mrs C saying that the couple had been very anxious about the outcome of her illness and that Consultant 2 had given them more information than they had had in the previous weeks. Mrs C telephoned her husband to ask him to take her home, and Administrator 1 said she told Mrs C that she and Administrator 2 would be available to speak to Mr C when he arrived. Contrary to this account, Mr C said, in a letter to me, that Mrs C was asked to leave the ward and given no explanation of the reason. However, in his complaint letter to the Board, Mr C said that Administrator 1 had told Mrs C on the morning of 22 March that her operation had been cancelled because of a breakdown in relationships and that a MSP had become involved. I am satisfied that this confirms Administrator 1's account that she explained the cancellation to Mrs C, although I record here that, in commenting on a draft of this report, Mr C maintained that Administrator 1 did not give an adequate explanation to his wife.

15. Administrator 1 said that, after this conversation with Mrs C, she gave a contact telephone number to a ward nurse so that she could be told when Mr C arrived. She then went to collect Administrator 2. Meanwhile, Mrs C left the ward and went to the Lounge. The Nurse was in the Lounge and, later, said that Mrs C had entered without a ward escort, explaining that she was waiting for her husband. The Nurse said that, on arrival in the Lounge, Mr C seemed very angry. When they asked to speak to Administrator 1, the Nurse said she showed them to a private room and went to Administrator 1's office, which was empty. The Nurse said that, when she told the couple this, Mr C became more aggressive and criticised her attitude. She said she told him she was not going to argue and that it would be better if they left. She later indicated that she would have used a pager to find Administrator 1 but that she felt she had no opportunity to do so because of Mr C's aggression and criticism.

16. Mr C's account is that, when he went to collect his wife, the Nurse told him that she had had good nursing care, that he had been wrong to complain about nursing staff, that his behaviour to her and Consultant 2 had been inappropriate and that they should leave. When he replied that Administrator 1 had asked them to see her (Administrator 1), the Nurse told them that Administrator 1 was unavailable (because her room was empty) and repeated her demand that they leave. Mr C later learned that Administrator 1 and Administrator 2 had been

searching for him and his wife. Mr C told me that he had not been aggressive to the Nurse.

17. When Administrator 1 had collected Administrator 2, they went to the ward to await Mr C so they could have the discussion which Administrator 1 said she had offered to Mrs C (see paragraph 13). On the way they passed the Lounge, where the Nurse gave her account of what had since happened and said the couple had now left. On arrival at the ward, Administrator 1 asked why Mrs C had been taken to the Lounge, because she had left instructions on the ward to the contrary. However, it appeared that ward staff had not yet realised that Mrs C had left the ward. All ward staff on duty denied having taken Mrs C to the Lounge. It was decided to give the couple the chance to reach home and settle in before telephoning them to discuss the events and the next steps. The advisers consider that this was sensible, although I record here that, in commenting on a draft of this report, Mr C said that he believed the Hospital had taken this approach to give themselves time to 'get their stories straight' because a MSP had become involved.

18. An internal email from Administrator 2 states that later that day (22 March) she spoke to Mr C and the MSP to bring them up-to-date. Very early on 23 March, Consultant 2 emailed Administrator 2 to say that, as the same atmosphere of lack of trust and of complaint remained, he had decided not to operate on Mrs C at all. He immediately telephoned Consultant 1 to explain, suggesting that Mrs C be referred to a particular surgeon in Glasgow for the operation. On 23 March Mr C made his official complaint to the Board. When Consultant 2 learned that Mr C had copied that complaint letter to the MSP, the Health Minister and a MP, and that Mr C had said he was considering litigation and had spoken to the media, he felt that this confirmed the fears he had had about Mr C's likely impact on his doctor/patient relationship. Consultant 1 made the referral to Glasgow, where an operation was performed the following month, enabling a diagnosis to be made. Tragically for the couple, Mrs C had a malignant mesothelioma, an incurable condition. The advisers have said that the decision not to operate in March had no ill effect clinically on Mrs C's condition. In other words, the delay in her diagnosis of malignant mesothelioma made no difference to her management as she was already being adequately treated (by Consultant 1) by removal of the lung fluid. The difference, of course, was that if the operation had gone ahead as planned, the couple would have learnt the dreadful news several weeks earlier than they

did. Mr C said that the draft of this report made no mention of the immense emotional distress caused to his wife by the operation's cancellation, and I am happy now to include this point.

(b) and (e) Conclusion

19. At the pre-admission clinic on 15 March, staff told Mr and Mrs C that they could put their remaining questions to Consultant 2 if they arrived earlier on 21 March than had been arranged. The Board told me that the pre-admission clinic staff then made Consultant 2's secretary aware of this. (They also said that Consultant 2 was always available on that morning of the week for discussions with patients.) Where things went wrong is that no one appears to have told the Nurse. She was faced (see paragraph 7) with a shortage of chairs in the Lounge and knowledge of the recent Hospital policy that relatives could not wait there. As Mr C did not appear to have an appointment time she concluded that he had no actual appointment and should be asked to leave. I make no comment here about either Mr C's or the Nurse's manner as each have their own, contradictory, views, which cannot be proven – except that there seems to be no dispute that, after the meeting, the Nurse asked Mr C if things were now alright. That would imply to me a good manner, although I note Mr C's view that she had simply realised the inappropriateness of her earlier manner and realised that he would complain about her. As for her actions, the Nurse acted appropriately by contacting Consultant 2's secretary. I should add here that I make no comment about Mr C's or Consultant 2's manner at their meeting on 21 March because their (contradictory) accounts cannot be proven.

20. At the premature end of Mrs C's stay, there appears to me to have been a genuine misunderstanding. In other words, Administrator 1 mistakenly appears to have assumed that Mrs C would remain on the ward until her husband arrived (when the three of them, with Administrator 2, could discuss the situation further) and Mrs C mistakenly appears to have assumed that she should wait for her husband in the Lounge. Again, I make no comment about either Mr C's or the Nurse's manner in the Lounge when Mr C came to collect his wife as these cannot be proven – although, again, I note that the Nurse's action in going to look for Administrator 1 was appropriate.

21. Therefore, I make no finding on complaint (b) and I uphold complaint (e).

(b) and (e) Recommendation

22. The Ombudsman makes no recommendation for complaint (b). For complaint (e) she recommends that the Board arrange for staff on duty in the Lounge to be aware of any provision which has been made for patients or relatives in the Lounge to see, for example, a doctor.

(a) Conclusion

23. I turn now to the operation's cancellation. It is plain that Consultant 2 felt that Mr C would have an unhelpful influence on his own dealings with Mrs C and that Mr C's involvement clearly meant that any relationship was going to be with them as a couple. Guidance produced by the General Medical Council (GMC) (Good Medical Practice) does provide for doctors to end their professional relationship with a patient in certain circumstances, for example, where the doctor considers that there has been a breakdown in a working relationship. The advisers consider that Consultant 2's decision to cancel the operation was, therefore, appropriate. The GMC guidance also says that, when a doctor does end a professional relationship with a patient, he or she should ensure that arrangements are made quickly for the patient's continuing care. An email timed at 08:30 on 23 March shows that Consultant 2 had taken the decision at that time to withdraw the offer of a rescheduled operation for the 24th because it was clear that the situation was not going to improve. A file note dated as 10:10 on 23 March indicates that, by then, Consultant 1 had been informed and the idea of a referral to Glasgow had been put to him. It is, therefore, clear that instant action was taken to provide for Mrs C's care elsewhere. In other words, GMC guidance was followed. Therefore, I do not uphold complaint (a).

(a) Recommendation

24. The Ombudsman makes no recommendation for complaint (a).

(d) Conclusion

25. The GMC guidance also requires doctors to keep patient records, for example about decisions made and information given to patients. Consultant 2 recorded what was happening in his contacts with, for example, Administrator 1. However, he made no note in the clinical records about his decision not to operate, the events leading to that decision or his contact with Consultant 1 about it. The

advisers consider that he should have done so and that the shortcoming was not in line with GMC guidance. Therefore, I uphold complaint (d).

(d) Recommendation

26. The Ombudsman recommends that Consultant 2 review his record keeping in line with GMC guidance.

(c) The Board's two replies to Mr C's complaint were insulting and inadequate

27. I now turn to the two replies in the handling of Mr C's complaint. The Board's official responses were from their Director of Nursing on 25 April 2005 and the Division's Chief Executive on 26 April 2005. Mr C complained to the Board, and, later, to this office, that the letters were insulting and offensive in tone and content. He said the letters: implied that his own behaviour caused what happened; were disingenuous about the reasons for not carrying out his wife's operation; accused his wife of going to the Lounge without staff's knowledge; said that they had left the hospital on 22 March (when, in fact, they left because they were told to do so); failed to acknowledge Mrs C's wishes as the patient (given that she needed treatment and had been prepared to trust Consultant 2); failed to reveal the truth. He copied the comments which he wrote to the Board to all MSPs, the Health Minister in Scotland and a MP.

28. Amongst other things, the Director of Nursing's letter said she understood that the meeting with Consultant 2 did not go well and 'you have agreed that you were partly to blame'. However, she did not address the complaints about Consultant 2's manner at the meeting, saying instead that he 'happily' gave explanations at the meeting. She explained why Consultant 2 felt the relationship had broken down and why this made him feel it would be inappropriate for him to be involved in Mrs C's care. She said he provisionally rescheduled the operation in the hope of a resolution. She explained that she had been told that Mrs C left the ward without staff's knowledge. Although it did not cover the complaint about Consultant 2's manner at the meeting, the Director's letter was a detailed one of more than two pages.

29. The Chief Executive's letter was intended simply to explain relevant aspects of the NHS complaints procedure for Mr C's information.

(c) Conclusion

30. The Chief Executive's letter merely gave factual information about what Mr C could do as part of the NHS and Ombudsman complaints processes. I am satisfied that it contains no shortcomings in either content or tone.

31. The Director of Nursing's letter was the actual response to the complaint. I am satisfied that it was an appropriate response. For example, in stating '…you have agreed you were partly to blame', the Director was only repeating what Mr C himself had said. I am also satisfied that her remarks about Mrs C's leaving the ward and the couple's later leaving the Hospital were factual statements, not criticism. The evidence indicates that Mrs C did make her own way to the Lounge. I have seen no papers on file which blame Mrs C in any way for this, only acknowledgements that it caused confusion. Whilst I recognise that the couple left the building because the Nurse told them to, the Board were factually correct in stating that they had left. I consider that the information in the letter about the reasons for the cancellation were adequate, rather than disingenuous. In other words, I am satisfied that Mr C could reasonably be expected from that letter to understand why Consultant 2 had felt he could not operate unless matters were resolved.

32. I have one criticism of the Director of Nursing's letter. Although it contains (see paragraph 27) several references to the Nurse as having felt uneasy about Mr C's manner and to Mr C's making accusations at the meeting, no account is taken of the possibility of a poor manner in respect of Consultant 2 or the Nurse. To make references to one party's manner whilst omitting references to that of the other parties must have seemed biased to Mr C. In any case, it should have been covered in some detail as it was a significant part of Mr C's complaint. I have thought carefully about this and I have decided, on balance, not to uphold Mr C's complaint about the complaint responses. This is because I am satisfied that this apparent bias against Mr C was a matter or poor writing, not of actual bias. My evidence for this comes from the Board's clearly-documented complaint file, which shows overwhelmingly that staff took action at every possible step to investigate the events and to consider how matters could be resolved. Much of the internal communication was by email, which provides proof of dates and times; from these I can see the urgency with which staff acted. So I consider that the Board took the

events and the subsequent complaint seriously and that their actions were not influenced by bias.

(c) Recommendation

33. The Ombudsman makes no recommendation for complaint (c).

31 October 2006

Annex 1

Explanation of abbreviations used

Mr C	The complainant
Mrs C	Mr C's wife
The Board	Forth Valley NHS Board
The Division	The Board's Acute Operating Division
The Hospital	The hospital where Mrs C was to have her operation
Consultant 1	Mrs C's own consultant
Consultant 2	The consultant surgeon who was to operate on Mrs C at Consultant 1's request
The Lounge	The Hospital's Admission and Discharge Lounge
The Nurse	The nurse whom Mr and Mrs C saw when they arrived at, and left, the Lounge
Administrator 1	The surgical unit clinical co-ordinator at the Hospital
Administrator 2	A patient relations officer at the Hospital
The GMC	The General Medical Council