

Scottish Parliament Region: South of Scotland

Case 201203514: Ayrshire and Arran NHS Board

Summary of Investigation

Category

Health: Prison Health Care; complaints handling

Overview

Mr C, who is a prisoner, complained that the prison health centre was restricting his access to the NHS complaints procedure.

Specific complaint and conclusion

The complaint which has been investigated is that Mr C has been unreasonably denied access to the NHS complaints procedure (*upheld*).

Redress and recommendations

The Ombudsman recommends that Ayrshire and Arran NHS Board:

Completion date

- | | |
|---|-------------|
| (i) review the local process in place for the management of prison healthcare complaints to ensure that the handling of such complaints is brought into line with the good practice outlined in the Scottish Government Guidance 'Can I help you?'; | 3 July 2013 |
| (ii) take steps to ensure that NHS complaint forms are readily available for prisoners to access; and | 3 July 2013 |
| (iii) provide prisoners with a reference number upon receipt of their feedback, comments and concerns or complaint. | 3 July 2013 |

Main Investigation Report

Introduction

1. Mr C complained about the process in place for prisoners receiving their weekly medication at HMP Kilmarnock (the Prison). He submitted his complaint on a NHS feedback, comments or concerns form (feedback form). In addition, Mr C submitted a complaint to the Director of the Prison in which he raised concerns about the process in place for prison healthcare complaints.

2. The complaint from Mr C which I have investigated is that Mr C has been unreasonably denied access to the NHS complaints procedure.

3. I did not investigate Mr C's concerns about the process in place for prisoners receiving their weekly medication because at the time of bringing his complaint to my office, it had not gone through the NHS complaints procedure.

Investigation

4. In investigating Mr C's complaint, my complaints reviewer considered all of the information submitted by him. In addition, she made enquiries with Ayrshire and Arran NHS Board (the Board) and reviewed the Scottish Government Guidance 'Can I help you?' dated 28 March 2012.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Board were given an opportunity to comment on a draft of this report.

Complaint: Mr C has been unreasonably denied access to the NHS complaints procedure

6. In his complaint to the Director, Mr C said NHS staff had refused to give him a formal complaints form. He enclosed a copy of his feedback form which he noted as outlining his complaint. Mr C said he wanted a proper NHS complaints process to be available for prisoners and for a reference number to be provided so that the progress of the complaint could be tracked. The Director advised Mr C that he had addressed his complaint to NHS personnel in the health centre. He also noted that he had been informed that the Deputy Clinical Operations Manager had responded to Mr C in writing.

7. In his letter, Mr C outlined his complaint to my office. He said NHS staff at the Prison refused to give any prisoner a NHS complaints form. He also said

feedback forms regularly went unanswered and were not given a reference number which meant there was no record of it. Mr C's feedback form did not have a reference number recorded on it. Mr C said that to resolve his complaint, he wanted every hall in the Prison to have NHS complaints forms on display to allow prisoners to complain about the NHS when they needed to. He said he wanted complaints to be given a reference number to ensure that prisoners could track its progress. Mr C also noted that at the time of submitting his complaint to my office, he had not received the written response from the Deputy Clinical Operations Manager as referred to by the Director.

8. Mr C later forwarded a copy of the response he received from the Deputy Clinical Operations Manager. He also noted that NHS staff had refused to give him a NHS complaints form again. In addition, Mr C wrote to another one of my complaints reviewers and advised that he had been provided with a NHS complaints form and he had someone copy it a number of times for him. He said he had distributed the form to other prisoners but on sending the completed forms to the health centre, the forms were thrown away.

9. I also received a copy of a prison complaint response to Mr C which noted that the forms were not being accepted by the NHS because Mr C had photocopied the incorrect form. The response noted that Mr C agreed the forms were not the correct complaint form but he said he had resorted to that because the NHS were refusing to provide prisoners with the correct complaint form.

10. My complaints reviewer asked the complaints team at the Board to outline what the NHS complaints process was for prisoners. The complaints team provided the following information. Feedback forms are made available to prisoners in each of the house blocks within the Prison. Prisoners are encouraged to complete that form at an early stage of experiencing any concerns regarding their NHS care as it provides an opportunity for the prisoner and a member of healthcare staff to have a discussion and hopefully resolve the issue quickly. All feedback forms are logged and scanned electronically when received within the health centre including the written response before it is returned to the prisoner. If the prisoner is not satisfied with the response, then a manager within healthcare will be notified and a further discussion will be offered. If the prisoner requests that their concern be escalated to the formal complaints procedure then a formal complaints form is issued by the healthcare manager. In addition, the complaints team also provided a copy of their local

process for the management of prison healthcare related feedback, comments, concerns or complaints. That document outlined a two stage process – informal comment, concern or complaint and formal complaint.

11. The Scottish Government Guidance 'Can I help you?' sets out best practice for relevant NHS bodies and health service providers to ensure their frontline staff are trained, supported and empowered to deal with feedback, comments, concerns and complaints. Paragraph 2.2.1 states 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 goes onto 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.'

And paragraph 3.8.1.3 states:

'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.'

12. After obtaining information from the complaints team and reviewing the Scottish Government Guidance 'Can I help you?', my complaints reviewer received further information from Mr C. He provided a letter he received from the primary care manager on 1 February 2013 which outlined the NHS complaints procedure for prisoners. It outlined the following instructions:

Stage 1

Complete feedback, comments or concern form. Following the response from healthcare regarding your initial concern if you remain dissatisfied

with the response given please complete a further feedback form requesting a discussion with one of the healthcare managers in order to resolve your concerns at local level.

Stage 2

If you remain dissatisfied with the outcome of your discussion with the healthcare manager you can request a formal NHS complaint form which will be provided to you direct from the healthcare department. This form should be processed via the formal complaints process.

Conclusion

13. Since the NHS became responsible for prison healthcare, my office has received a number of contacts from prisoners across the Scottish prison estate seeking advice and assistance on progressing their complaint through the NHS complaints process. Prisoners have often expressed the view that it is difficult to get beyond the feedback process.

14. Having reviewed Mr C's case, I am satisfied that based on the information my office has received from the Board and Mr C about the prison healthcare complaints process being operated within the Prison, the process does not comply with the practice outlined in the Scottish Government Guidance 'Can I help you?'.

15. It is clear that Mr C wanted to submit a complaint. However, because of the prison healthcare complaints process being operated within the Prison, Mr C had to submit his complaint about the process in place for prisoners receiving their weekly medication on a feedback form because he was unable to access a complaints form. In addition, Mr C sought assistance from the Director of the Prison in relation to the difficulties he was experiencing in trying to make a complaint. The Director confirmed that he outlined the basis of Mr C's complaint to healthcare staff. That should not need to happen and could, in some circumstances, be viewed as inappropriate particularly if a prisoner wishes to complain about a particularly sensitive health matter.

16. The information provided by the Board confirms that prisoners are required to complete the feedback process twice and only after this, should they remain dissatisfied, can they access the formal complaints process. It appears the Board are using the feedback process as an additional level to the NHS complaints process. That is restricting and over complicating 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. It is specifically stated that feedback, comments, concerns and complaints from patients who receive NHS treatment whilst in a prison health centre should be handled in accordance with the Scottish Government Guidance. On the basis of the evidence available to my office, I am satisfied that Mr C has been unreasonably denied access to the NHS complaints procedure.

17. In addition, in responding to the draft of this report, the Board confirmed that they intended to make further improvements across the organisation to their complaints handling procedure. The Board said they were aiming to place more emphasis on frontline resolution for formal complaints which would provide the opportunity for even more local and timely resolution for many complaints.

18. I welcome the Board's comments on the improvements they intend to make to their complaints handling procedure, and in particular, their aim to place more emphasis on front line resolution for formal complaints. However, whilst paragraph 3.8.1.7 of the Scottish Government Guidance focuses on achieving early resolution without a detailed investigation within three working days, that is once the complaint has entered the complaints process and is within the 20 working day. This did not happen in Mr C's case.

19. The Board also advised my office that they had investigated a complaint from Mr C that he had submitted numerous feedback, concerns and issues forms which had not been responded to. The Board confirmed that the outcome of that investigation was that Mr C had only completed one feedback, concerns and issues form on 7 November 2012. This is the complaint Mr C brought to my office. Whilst I acknowledge there appears to be no evidence to support what Mr C said to my office, in particular, that feedback forms regularly went unanswered, the information provided by the Board confirms that the prison health complaints process does not comply with the Scottish Government Guidance as evidenced in paragraphs 10 and 12.

20. On the basis of all of the evidence available, I uphold Mr C's complaint and make the following recommendations.

Recommendations

	<i>Completion date</i>
21. I recommend that the Board:	
(i) review the local process in place for the management of prison healthcare complaints to ensure that the handling of such complaints is brought into line with the good practice outlined in the Scottish Government Guidance 'Can I help you?';	3 July 2013
(ii) take steps to ensure that NHS complaint forms are readily available for prisoners to access; and	3 July 2013
(iii) provide prisoners with a reference number upon receipt of their feedback, comments and concerns or complaint.	3 July 2013
22. The Ombudsman asks that the Board notify him when the recommendations have been implemented.	

Explanation of abbreviations used

Mr C	The complainant
The Prison	HMP Kilmarnock
Feedback form	NHS feedback, comments or concerns form
The Board	Ayrshire and Arran NHS Board

List of legislation and policies considered

The Scottish Government Guidance on Handling and Learning from Feedback, Comments, Concerns and Complaints about NHS Health Care Services – CEL 8 (2012) 28 March 2012