Investigation of a complaint against a GP Practice

Report Reference: 202003467

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202003467
Listed Authority: Mid Ulster Health Care

SUMMARY

This complaint was about care and treatment Mid Ulster Health Care (the Practice) provided to the patient from 24 November 2021 to 6 January 2022.

The patient experienced elbow pain in November 2021. The Practice diagnosed an infected elbow and prescribed an antibiotic. However, the patient continued to experience pain over the next six weeks. He attended the out of hours doctor and hospital to have his elbow drained during this time. He believed the Practice should have given him a steroid injection which resolved the issue previously. The investigation found the Practice treated the patient's elbow in accordance with guidance. It did not identify a failure in care and treatment.

The complaint was also about the Practice's decision to remove the patient from its Patient List in August 2022. The patient believed the Practice unfairly removed him because he submitted a complaint. The investigation found that the Practice's decision to issue a warning letter to the complainant in June 2022 was in accordance with Regulations. However, it established that the Practice's later decision to remove the patient from its list was intrinsically linked to the patient's complaint. The investigation found that the Practice's actions were not in accordance with relevant guidance. It also found its decision to remove the patient was unfair and disproportionate. I considered this maladministration.

I recommended that the Practice apologise to the patient for the injustice caused to him. I also recommended actions for the Practice to take to prevent this maladministration from reoccurring. The Practice accepted my recommendations and implemented learning following consideration of the draft report.

THE COMPLAINT

1. This complaint was about care and treatment the Mid Ulster Health Care Practice (the Practice) provided to the patient from 24 November 2021 to 6 January 2022. The complaint was also about the Practice's decision to remove the patient from its Patient List.

Background

2. The patient had a history of Cellulitis[1] (Acute Severe Infection), noted in his right elbow in 2014.

3. On 31 October 2021 the patient attended a Minor Injuries Unit (MIU) with a swollen left elbow. The MIU diagnosed the patent with elbow bursitis[2] and prescribed an antibiotic. From 14 to 19 November 2021 the patient attended the MIU on four occasions, having his elbow drained and prescribed further antibiotics. On 19 November 2021 the MIU referred the patient to the Emergency Department (ED). At the ED the patient had bloods taken, which were normal. The ED referred the patient to his GP (the Practice).

4. On 13 June 2022, a Practice GP conducted a home visit with the patient's mother. The patient was visiting his mother at that time. Following the visit, the Practice issued the patient a warning letter for his behaviour towards the GP during the visit. The letter documented, '*In the event of any further incidents occurring in the next twelve months we will have no alternative but to remove you from the [Patient List]*'.

5. The patient raised concerns with the Practice on 29 July 2022 regarding care and treatment it provided to him for his elbow. The Practice responded to the complaint on 15 August 2022. The letter also informed the patient the Practice took the decision to remove him from the Patient List.

[1] An infection of the deep layers of skin and the underlying tissue.
[2] Inflammation of the fluid-filled sac at the tip of the elbow. This causes swelling, redness and pain at the elbow.

Issues of complaint

6. I accepted the following issues of complaint for investigation:

Issue 1: Whether the Practice provided appropriate care and treatment to the patient from 24 November 2021 to 6 January 2022 relating to swelling and pain in the patient's elbow.

Issue 2: Whether the Practice removing the patient from its Patient List was reasonable and in accordance with guidelines.

INVESTIGATION METHODOLOGY

7. In order to investigate this complaint, the Investigating Officer obtained from the Practice all relevant documentation together with its comments on the issues the complainant raised.

Independent Professional Advice Sought

8. After further consideration of the issues, I obtained independent professional advice from the following independent professional advisor (IPA):

- A General Practitioner (IPA) with experience in primary care.

I enclose the clinical advice received at Appendix two to this report together with the relevant extracts from medical records at Appendix three.

9. The information and advice which informed the findings and conclusions are included within the body of this report. The IPA provided 'advice'. However, how I weighed this advice, within the context of this particular complaint, is a matter for my discretion.

Relevant Standards and Guidance

10. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles[3]:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

11. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

    The specific standards and guidance relevant to this complaint are:

    - The National Institute for Health and Care Excellence's Clinical Knowledge Summaries on Olecranon Bursitis, May 2021 (NICE guidance);
    - The Health and Personal Social Services (General Medical Services Contracts) Regulations (NI) 2004, Schedule 5, Part 2 (HPSS Regulations);
    - General Medical Council's Guidance on Ending your Professional Relationship with a Patient, Published 25 March 2013 (GMC Guidance);
    - The Practice's Guide to Making a Complaint (Practice complaint procedure); and
    - Department of Health, Social Services and Public Safety's Zero Tolerance on Abuse of Staff Circular, 2 April 2007 (DHSSPS Circular).

    I enclose relevant sections of the guidance considered at Appendix four to this report.

12. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.

[3] These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

13. A draft copy of this report was shared with the patient and the Practice for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Issue 1: Whether the Practice provided appropriate care and treatment to the patient from 24 November 2021 to 6 January 2022 relating to swelling and pain in the patient's elbow.

Detail of Complaint

14. The patient said the Practice failed to appropriately treat his elbow on 24 November 2021. He believed the Practice should have given him a steroid injection which resolved this issue on a previous occasion. The patient felt the Practice was '*fobbing [him] off*' in refusing to give the injection he requested and telling him to return when his elbow was better.

15. The patient said the Practice's failure to correctly treat his elbow caused him continued pain and discomfort. Following his Practice visit on 24 November, the patient said he attended the hospital on several occasions to have his elbow drained.

16. The patient said, six weeks after his initial appointment, the Practice '*eventually*' gave him the correct treatment of a steroid injection on 6 January 2022. The patient believed he experienced pain and discomfort for '*longer than [he] should have*.'

Evidence Considered

Legislation/Policies/Guidance

17. I considered the NICE guidance. I enclose relevant extracts of the guidance at Appendix four to this report.

Practice's response to investigation enquiries

18. The Practice stated it diagnosed the patient with left elbow Olecranon Bursitis on 24 November 2021. The patient had a '*history of Cellulitis (Acute Severe Infection)*' of his right elbow in 2014 which required intravenous antibiotics.

19. The Practice stated its visible inspection on 24 November 2021 found the patient's elbow infected and it prescribed an '*appropriate antibiotic*.' Although it did not document the exact features of the patient's infection, it '*distinctly*' recalled a reddened, tender, swollen appearance consistent with infection. Prior to 24 November 2021, the hospital MIU also diagnosed the patient with infection of the elbow and prescribed an antibiotic.

20. The Practice stated, '*it would have been negligent in these circumstances to proceed with a steroid injection as requested by this patient, because a steroid injection could cause Cellulitis related to the elbow*.' The Practice said it explained this to the patient.

21. The Practice's response to this Office stated the patient suffered from psoriasis[4] affecting his elbows which it treated using Enstilar[5] medication, a potent immune-suppressant cream. This created an '*extra risk factor*' regarding the possibility of infection which required caution regarding an invasive procedure such as a steroid joint infection. Its records documented on 24 November 2021 '*Stop Enstilar, possibly weakening skin*.'

22. The Practice stated it provided the steroid injection on 6 January 2022 when the patient's elbow had settled from infection, and this was the '*correct time*' to do so.

Relevant Independent Professional Advice

23. The IPA advised from the clinical notes on 24 November 2021, the Practice assessed the patient in the surgery. It recorded the diagnosis as left olecranon bursitis. It noted the patient's past medical history of having cellulitis in 2014

[4] A skin condition that causes red, flaky, crusty patches of skin covered with silvery scales.
[5] A prescription medication used on the skin to treat psoriasis.

which needed intravenous antibiotics at that time. The Practice advised the patient to continue oral antibiotics Flucloxacillin[6] for a further seven days.

24. The IPA advised NICE guidance outlines different treatment required depending on whether the bursitis is septic (infected) or non-septic (non-infected). Following examination, the Practice treated the patient for '*suspected infected bursitis*.' As olecranon bursitis is a 'clinical diagnosis,[7]' given other clinicians[8] previously documented the same diagnosis and treatment for septic bursitis, there was a '*high probability'* the Practice correctly diagnosed the patient with septic olecranon bursitis on 24 November 2021.

25. The IPA advised the Practice's medical records documented it appropriately treated the patient for suspected septic bursitis with an oral antibiotic for seven days on 24 November 2021. The Practice did not give the patient a steroid injection and this was appropriate based on the clinical findings. The IPA advised there were no failings relating to this.

26. The IPA advised the medical records are unclear whether the Practice reviewed the patient a few days after prescribing the antibiotic to monitor its effectiveness. She advised the Practice should follow up on patients with suspected septic bursitis. However, she did not identify any impact on the patient on this occasion.

27. The IPA advised the Practice's response stated on examination of the patient's elbow on 6 January 2022 the infection had settled. The medical records document the Practice gave the patient a steroid injection six weeks after his first presentation with the Practice.

28. The IPA advised the MIU produced a joint aspiration report on 24 December 2021 which documented '*no evidence of infection*.' The Practice noted the report prior to examining the patient and delivering the injection on 6 January

[6] An antibiotic to treat infections.
[7] The process of identifying a disease or condition based on signs, symptoms and medical history.
[8] Those from hospital examinations detailed in Appendix four.

2022. The IPA advised this was reasonable and appropriate management in accordance with guidance.

29. The IPA advised the Practice followed the NICE guidance and treated the patient appropriately. She found no failings with the Practice's treatment of the patient on 24 November 2021 or 6 January 2022.

30. The IPA advised the Practice notes for 24 November 2021 and 6 January 2022 do not document the examination findings such as temperature, blood pressure and if the patient was able to move his elbow. There was also no photograph of the elbow and safety netting advice was incomplete. The IPA did not identify any impact on the patient's care and treatment.

Analysis and Findings

31. The patient said the Practice failed to appropriately treat his elbow on 24 November 2021. He believed the Practice should have given him a steroid injection at that time rather than six weeks later.

32. NICE guidance states if septic bursitis is suspected, it should be treated empirically with an oral antibiotic. Flucloxacillin is the preferred antibiotic. I note that on 24 November 2021, the Practice diagnosed the patient with an infected elbow and appropriately prescribed this antibiotic. Therefore, I consider the Practice provided the patient treatment in accordance with NICE guidance.

33. In relation to a steroid injection, the NICE guidance states the clinician should only consider a Corticosteroid injection into the bursa if they are '*confident that bursitis is non-septic*.' If there is no response to conservative measures[9] after two months a steroid injection may be beneficial where '*septic bursitis has been excluded*.'

34. The Practice stated it did not consider a steroid injection appropriate at the time of the consultation on 24 November 2021 given the patient's infection. I note the IPA's advice that this decision was in accordance with NICE guidance. This

[9] I.e.: antibiotic.

was because an injection is '*not indicated for infected bursitis'* as there is a risk the injection could aggravate the infection. She advised, as the Practice diagnosed septic bursitis, antibiotics were '*prescribed as per the recommendation*[10].' I accept this advice.

35. The Practice stated the patient's infection had settled on 6 January 2022, and it gave the patient the steroid injection. It considered this was the '*correct time to do so*.' I note the IPA advised this was in accordance with NICE guidance which specifies an injection should only be given in non-infected bursitis. I accept the IPA's advice.

36. Having considered the evidence available, I am satisfied the Practice treated the patient's elbow in accordance with NICE guidance on 24 November 2021 and 6 January 2022. I consider this appropriate. As such I do not uphold this complaint.

37. I note the NICE Guidance states clinicians should review the antibiotic every few days to monitor the effectiveness of the therapy. The IPA advised the Practice did not review the patient after prescribing the antibiotic on 24 November 2021. She advised this would have allowed the patient to raise any concerns he had with his treatment. However, she advised out of hours doctors and the MIU reviewed the patient on 2 and 24 December 2021. Therefore, I am satisfied the patient had the opportunity to raise any concerns he had about the antibiotic with these clinicians.

38. I note the IPA also advised the Practice did not document the examination findings on 24 November 2021 or 6 January 2022. Based on the evidence and the IPA's advice, I do not consider this impacted the patient's care and treatment. However, clinical records should precisely document how a doctor reaches a diagnosis to ensure clarity for those clinicians who later rely on the information recorded. I would ask the Practice to remind staff to ensure they document such information in patients' records in future.

[10] NICE guidance.

Issue 2: Whether the Practice removing the patient from its Patient List was reasonable and in accordance with guidelines.

Detail of Complaint

39. The patient felt the Practice unfairly removed him from its Patient List. He believed this was because he raised a concern about care and treatment it provided for his elbow.

Evidence Considered

Legislation/Policies/Guidance

40. I considered the following legislation/policies/guidance:
    - HPSS Regulations;
    - GMC Guidance;
    - Practice complaint procedure; and
    - DHSSPS Circular.

Practice's response to investigation enquiries

41. The Practice stated the patient '*verbally abused*' the Practice GP during a care home visit with his mother on 13 June 2022. The patient '*pursued*' the GP through the corridors while exiting the care home and followed him to his car '*continuously berating*' the GP about the care provided to him. The GP felt '*threatened*'. It sent a warning letter to the patient about his behaviour the next day.

42. The Practice stated the patient's subsequent complaint was '*entirely unreasonable*' and represented an '*irretrievable situation'* regarding potential resolution. This constituted an '*irrevocable breakdown in the doctor/patient relationship*.' It dealt with the patient's removal correctly in accordance with HPSS.

43. The Practice's most recent response to this Office[11] stated, at the meeting on 1 August 2022 the Practice agreed that the patient's behaviour on 13 June 2022

[11] Dated 18 May 2023.

resulted in an '*irrevocable breakdown'* in the Practice and patient relationship which '*warranted immediate removal'* from the Patient List in conjunction with HPSS Section 20(3) and the zero-tolerance policy. This should have occurred on 14 June 2022 but instead the Practice issued a warning letter. No further incident occurred with the patient since the warning was issued.

Analysis and Findings

44. This issue of complaint was about the Practice's decision to remove the patient from its Patient List. In considering complaints of maladministration, my role is to identify the relevant statutory framework and whether the Practice applied those procedures that give effect to that framework appropriately. It is also to consider if the patient was treated fairly.

45. The Practice stated it removed the patient from its Patient List in accordance with Schedule 5, Part 2 Paragraph 20(2)(b) of the HPSS Regulations. The Regulations permit removal on the grounds of an '*irrevocable breakdown*' in the patient and Practice relationship.

46. I considered this paragraph of the Regulations. It states that a Practice may only request a removal if it warned the patient, within the previous 12 months, that he is at risk of removal. I note the Practice issued the patient a warning letter on 14 June 2022 in relation to his behaviour towards the GP.

47. The warning letter issued to the patient on 14 June 2022 documented, '*In the event of any further incidents occurring in the next twelve months we will have no alternative but to remove you from the [Patient List]*'. In its response to this office's enquiries, the Practice stated it did not experience any further incidents involving the patient prior to notifying him of his removal in August 2022. Therefore, I am satisfied the decision to remove the patient did not result from a second incident of unreasonable behaviour.

48. In this event, I considered whether it was appropriate for the Practice to remove the patient under paragraph 21 of the regulations. This states the criteria for removing a patient with '*immediate effect'*. This can occur if '*the patient has*

committed an act of violence' against a member of staff '*or behaved in such a way that any such person has feared for his safety*'.

49. The Practice's records describe the patient's behaviour during the incident in June 2022 as '*aggressive*' and state the GP '*felt threatened'*. However, they do not document that the patient '*committed an act of violence'.* I considered the GP feeling '*threatened*' could meet the criteria that he '*feared for his safety*.' However, the Regulations also state that in these situations, the Practice had to have '*reported the incident to the police*.' The records do not evidence that the Practice did so. I do not believe the situation met this criteria. Therefore, I am satisfied the decision to remove the patient did not fall under this section of the HPSS Regulations.

50. While the Practice acted in accordance with the HPSS Regulations by issuing a warning letter prior to removal, I do not consider its later decision to remove the patient meets any of the stipulated criteria. Therefore, the Practice did not act in accordance with the HPSS Regulations when it made its decision to remove the patient.

51. As I stated previously, I must also consider if in making its decision, the Practice treated the patient fairly. I considered the patient's view that the Practice removed him in August 2022 because he submitted a complaint about his care and treatment.

52. The complainant raised his concerns with the Practice in his letter dated 29 July 2022. The letter referred to care and treatment the Practice provided to him. It also referred to the warning letter he received in June 2022. I considered the Practice's complaint procedure. This states patients can raise a complaint or concern regarding care and treatment. Complaints will be handled '*Practice-based*' in accordance with HSC Guidelines. Having considered the content, there is nothing in the complainant's letter that would cause me to agree with the Practice's view that the complaint was '*vexatious*'. I am satisfied the Practice took punitive action against the patient in contravention of its own complaints' procedure.

53. The partners of the Practice met to consider the complaint on 1 August 2022. The notes of this meeting document '*Given the content of the letters it was agreed that there had been a complete breakdown in doctor/patient relationship and that [the patient] should be removed from the [Patient List]*'. I also considered the Practice's letter to the patient, dated 22 August 2022. This letter both responded to the patient's complaint and notified him of his removal.

54. Based on the evidence available, I consider the patient's complaint and the decision to remove him from the Practice's list are intrinsically linked. I have already found that the reasons for the Practice's decision did not fall under any of the criteria stated in the HPSS Regulations. Also, while the warning letter informed the patient of the consequences of a second incident of unreasonable behaviour, his only act prior to his removal was to submit a complaint. Therefore, I am satisfied it was the complaint that prompted the Practice's decision to remove the patient from its list. This is of significant concern to me as any patient is entitled to express dissatisfaction, either verbal or written, about the care and treatment they receive. They should be able to do so without fear of repercussions or negative impact on their healthcare.

55. The GMC Guidance states '*you should not end a professional relationship with a patient solely because of a complaint the patient has made about you or your team*.' The Practice did not act in accordance with this guidance when it made its decision to remove the patient from its list. It is my view that the Practice treated the patient unfairly. This is also because in both issuing its warning letter, and later removing the patient without any incident occurring, it effectively sanctioned the patient twice for the incident on 13 June 2022.

56. The First Principle of Good Administration, '*Getting it Right'* requires bodies to act '*in accordance with the law and relevant guidance, with regard for the rights of those concerned*.' The Fourth Principle of Good Administration, '*Acting Fairly and Proportionately'* requires bodies to ensure its '*decisions and actions are proportionate, appropriate and fair*.' I consider the Practice's actions in removing the patient unfair and disproportionate. It appears to have taken this

punitive action directly as a result of the patient availing of his right to complain. I am satisfied this constitutes maladministration. I consider this caused the patient to sustain the injustice of a loss of opportunity to access primary healthcare. I also consider it caused the patient to experience frustration.

57. I note that following this office's request for its Zero Tolerance policy, the Practice instead provided a DHSSPS Circular rather than a policy of its own. A Zero Tolerance Policy outlines to patients the behaviours a Practice expects when they deal with staff. It also informs patients of the consequences if they do not meet these standards, which may include removal. In the absence of such a policy, the Practice's patients will likely remain unclear as to what behaviour may lead to such action. I would ask the Practice to reflect on this and consider implementing its own Zero Tolerance policy for its patients.

CONCLUSION

58. I received a complaint about care and treatment the Practice provided to the patient from 24 November 2021 to 6 January 2022. I did not identify a failure in the Practice's care and treatment of the patient for the reasons outlined in this report. I understand, based on his previous experience, the patient felt the Practice could have treated his condition earlier by giving him a steroid injection. I hope my findings reassure the patient that the care and treatment the Practice provided was appropriate and in accordance with relevant guidelines.

59. The complaint was also about the Practice's decision to remove the patient from its Patient List. I identified maladministration in the process the Practice followed when it made its decision.

60. I recognise the maladministration caused the patient to sustain the injustice of a loss of opportunity to access primary healthcare, and frustration.

Recommendations

61. I recommend that within **one month** of the date of this report:

    (i) The Practice provides to the complainant a written apology in accordance with NIPSO's 'Guidance on issuing an apology' (July 2019), for the injustice caused as a result of the maladministration identified; and

    (ii) The Practice shares the findings of this report with its Partners and relevant staff to provide them with the opportunity to reflect on the failing identified.

62. I note that following its consideration of the provisional findings outlined in the draft report, the Practice delivered training to relevant staff on the removal of patients for the reason of a breakdown of the patient/Practice relationship of a family member. The training referred to the HPSS Regulations. The Practice also reviewed BMA and GMC Guidance regarding a patient's right to raise a complaint about concerns over care and treatment provided. I welcome the learning the Practice implemented.

63. The Practice accepted my findings and recommendations.

MARGARET KELLY
Ombudsman **26 March 2024**

Appendix 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.