



Northern Ireland

**Public Services**

Ombudsman

# **Investigation of a complaint against a Medical Practice**

**Report Reference: 202004697**

The Northern Ireland Public Services Ombudsman

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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:** 202004697

**Listed Authority:** A Medical Practice

## **SUMMARY**

This complaint was about a Medical Centre's (the Practice) decision to remove the complainant from its Patient List. It was also about how the Practice handled the complaint.

The complainant questioned the Practice's reasons for removing him from the list. The investigation found the Practice's actions to remove the complainant were not in accordance with relevant legislation. It established the Practice removed the complainant without giving him an initial warning. I considered this maladministration. I recognised the impact the Practice's actions had on the patient.

The complainant believed the Practice did not fully investigate his complaint. While I was not able to establish if the Practice fully investigated this complaint, I established that in dealing with the complainant's complaint, the Practice did not act in accordance with its Complaints Procedure.

I recommended that the Practice apologise to the complainant for the injustice caused to him. I also recommended actions for the Practice to take to prevent this maladministration from reoccurring.

## THE COMPLAINT

1. This complaint was about the Practice's decision to remove the complainant from its Patient List. It was also about how the Practice handled the complaint.

### Background

2. The complainant attended the Practice on 6 March 2023 where he provided a blood sample to a nurse in the Practice's treatment room. The nurse and the complainant discussed the removal of the complainant's skin tags<sup>1</sup>. The complainant then left the treatment room.
3. On 10 March, the complainant received a letter from the Practice informing him that it had removed him from its list of registered patients following an '*incident*' that occurred on 6 March which left a member of staff '*very upset*'.

### Issues of complaint

4. I accepted the following issue(s) of complaint for investigation:

**Issue 1: Whether the Practice acted in accordance with relevant standards when it removed the complainant from its list of registered patients.**

**Issue 2: Whether the Practice's handling of the internal complaint was in line with relevant procedures and standards.**

## INVESTIGATION METHODOLOGY

5. 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. This documentation included information relating to the Practice's complaints process.

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<sup>1</sup> Soft, skin-coloured growths on the skin. They are very common and are usually small and harmless.

## Relevant Standards and Guidance

6. 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<sup>2</sup>:

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

7. 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 of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- General Medical Council's Guidance (GMC) on Ending your Professional Relationship with a patient, Published 25 March 2013 (GMC Guidance);
- The Health and Personal Social Services (General Medical Services Contracts) Regulations (NI) 2004 (HPSS Regulations)
- British Medical Association's (BMA) Guidance on Removing Patients from your Practice List, Updated 7 September 2020 (BMA Guidance);
- The Practice's Zero Tolerance Policy.
- The Practice Complaints Procedure, undated (Practice Complaints Procedure);and
- The Department of Health's (DOH) Guidance in relation to the health and social care complaints procedure, April 2022 (the DOH's Complaints Procedure).

I enclose relevant sections of the guidance considered at Appendix 3 to this report.

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<sup>2</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

8. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the Practice's administrative actions. It is not my role to question the merits of a discretionary decision. That is unless my investigation identifies maladministration in the Practice's process of making that decision.
9. 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.
10. I shared a draft copy of this report with the complainant and the Practice for comment on factual accuracy and the reasonableness of the findings and recommendations.

## **THE INVESTIGATION**

### **Issue 1: Whether the Practice acted in accordance with relevant standards when it removed the complainant from its listing of registered patients.**

#### **Detail of Complaint**

11. The complainant said the following: he attended the Practice on 6 March 2023 where a nurse took a blood sample from him. He spoke with the nurse about how much he had paid to have his skin tags removed. He said the nurse tried to '*butt in*' but he '*carried on talking*'. He then asked the nurse if they were '*done with the blood samples*' and left the treatment room. On 10 March he received a letter from the Practice informing him he had been removed from the registered list of Practice patients because of his behaviour towards a member of staff.
12. The complainant said he '*could not believe what he was reading*' in the Practice's letter as there had been '*no incident*'. He also said the Practice accused him of making a derogatory comment about a staff member he had not spoken to in over 10 years. The complainant said the Practice did not speak with him or meet with him as part of its investigation into the complaint, which he felt impacted on the fairness of the process.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

13. I considered the following legislation and policies
  - HPPS Regulations.

### **The Practice's response to investigation enquiries**

14. The Practice stated the following: it removed the complainant from the Patient List due to his '*prolonged verbal aggression*' towards a nurse which left her '*severely affected*'. The complainant also called a Practice Partner '*a derogatory name*'. The nurse stated she would not be happy to treat the complainant in the future '*under any circumstances*'. As such it was not '*reasonable or practicable*' to give the complainant a warning before it removed him from the Practice List.
15. The Practice stated it held a Practice meeting on 7 March 2023 during which those in attendance discussed an '*incident in the treatment room*'. At this meeting the '*Practice Protocol and BMA Guidance on Zero Tolerance was reviewed*' and '*after deliberation it was decided that the appropriate course of action was to remove the patient from the practice list.*'
16. The Practice stated that apart from the incident in the treatment room on 6 March there were no other incidents of the complainant being '*abusive or threatening*'. It did not report him to the Police.

### **Analysis and Findings**

17. The issue of complaint was about the Practice's decision to remove the complainant from its Patient List. In considering complaints of maladministration, my role is to identify the relevant statutory framework and determine whether the Practice applied those procedures appropriately. It also considers if the patient was treated fairly.



18. The Practice stated it removed the complainant from its Patient List in accordance with the HPSS Regulations which allowed for removal without warning for an irrevocable breakdown of the relationship, and the '*aggressiveness*' of the complainant's behaviour.
19. Schedule 5, Part 2 Paragraph 20(2)(b) of the Regulations permit removal on the grounds of an '*irrevocable breakdown*' in the patient and Practice relationship. 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 they were at risk of removal, unless in the Practice's opinion it was '*not otherwise reasonable or practical for a warning to be given*' I note the Practice did not issue a warning to the complainant within the 12 months prior to his removal on 16 March 2023<sup>3</sup>. I note further the Practice's explanation that it was not '*reasonable or practicable*' to issue the complainant with a warning prior to removing him because he was verbally abusive to staff.
20. I also considered Schedule 5, Part 2 Paragraph 21 of the Regulations, which states the criteria for removing a patient with '*immediate effect*<sup>4</sup>'. 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*'. I considered whether it was appropriate for the Practice to remove the complainant under paragraph 21.
21. The Practice stated the complainant's '*prolonged verbal aggression*' on 6 March 2023 left the nurse '*severely affected*'. However, it did not state that the complainant '*committed an act of violence*'. I considered the nurse feeling '*severely affected*' could meet the criterion that she '*feared for her safety*.' However, the Regulations also state that in these situations, the Practice had to have '*reported the incident to the police*.' The Practice stated it did not do so. Given it did not report the incident to the police, I do not consider the Practice has demonstrated why it was not reasonable or practical to remove the complainant from the Patient List without a giving him a warning first.

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<sup>3</sup> The date the Practice informed BSO.

<sup>4</sup> . Without warning.

Therefore, I am satisfied the Practice did not act in accordance with the HPSS Regulations when it made its decision to remove the complainant without warning.

22. 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.*' I consider that by removing the complainant without warning the Practice did not act in accordance with the legislation. I am satisfied this constitutes maladministration. I consider this caused the complainant to sustain the injustice of a loss of opportunity to access primary healthcare. I also consider it caused the patient to experience frustration. Therefore, I uphold this issue of complaint.
  
23. I note in its response to this Office the Practice stated it removed the patient after reviewing '*BMA Guidance on Zero Tolerance*'. In addition, in its response to the complainant it stated it had removed him under the '*NHS Zero Tolerance Policy*'. However, I note that when this Office asked the Practice to supply the policies and procedures relevant to the complaint the Practice provided its own Zero tolerance policy and its internal Protocol for the Removal of Patients. 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. I considered the Practice's policy. While it provides a summary of expectations, it has shortcomings in complying with the regulations and guidance referred to above. I would ask the Practice to reflect on this and consider revising its own Zero Tolerance policy for its patients and staff.

**Issue 2: Whether the Practice's handling of the internal complaint was in line with relevant procedures and standards.**

**Detail of Complaint**

24. The complainant said the Practice did not provide him with an opportunity to discuss his complaint. He also believed the Practice did not fully investigate the complaint.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

25. I considered the following:
- Practice's complaint procedure

### **The Practice's response to investigation enquiries**

26. The Practice stated the following: it '*fully investigated*' the complaint and provided a full written response to the Complainant via an intermediary from Department of Health's Strategic Planning and Performance Group (SPPG) who was acting as an honest broker<sup>5</sup>. Practice staff met on four occasions: 21 March 2023, 30 March 2023, 4 April 2023 and 7 April 2023 to investigate the complaint. There were no records of what was discussed during these meetings. It did not meet with the complainant when investigating his complaint. It would '*certainly have given consideration to convening a meeting*' with him had he '*acknowledged that the...incident had actually occurred. This has not been the case.*'

### **Analysis and Findings**

27. The Practice stated staff met on four occasions to discuss the complaint. It stated there were no records of these meetings. I note the Practice complaints procedure states: '*Keep complaints record separate from patient clinical notes. Use the "Complaints file" and Investigate the complaint thoroughly in an independent and unbiased manner...Keep detailed notes of all meetings*'.
28. I reviewed the documentation the Practice provided in response to investigation enquiries which consisted of correspondence between the Practice and the complainant's intermediary from the SPPG. There was no record of any meetings between Practice staff to discuss the complaint, or any record of its decision-making process in how it investigated the complaint. I consider this lack of contemporaneous documentation makes it difficult to determine how the Practice investigated the complaint and if it did so thoroughly. While I cannot

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<sup>5</sup> someone who speaks with both sides involved in a disagreement, and tries to help them agree

definitively conclude that the Practice failed to thoroughly investigate the complainant's concerns into how it removed him from the Practice, it is nevertheless clear it did not follow its own complaints procedure in that it failed to adequately record how it investigated the complaint. This lack of documentation leads me question the robustness of the Practice's investigation of these matters.

29. In addition, I note with some concern the Practice's response to this Office that it did not meet with the complainant as he had not '*acknowledged that the...incident had actually occurred*'. The complainant's version of what occurred in the treatment room differs significantly from that of the nurse and there is no evidence in the documentation the Practice provided to demonstrate that it considered this. In my view the Practice appears to have uncritically accepted the nurse's account of the incident without considering the complainant's account.
30. The Practice Complaints Procedure states '*Investigate the complaint thoroughly in an independent and unbiased manner*' and '*Arrange for the patient to meet with you to discuss his/her case. Keep detailed notes using the interview form. Agree the details with the patient and get him/her to sign the form.*
31. The First Principle of Good Complaints Handling, '*getting it right*', requires a public body to adhere to relevant policies and standards, including its own, and to take account of relevant guidance and established good practice. The Second Principle of Good Complaints Handling, '*being customer focused*', requires bodies to listen to complainants to understand their complaint. The Third Principle of Good Complaint Handling '*being open and accountable*' requires a public body to keep '*full and accurate records.*' The Fourth Principle of Good Administration, '*acting fairly and proportionately*' requires bodies to act '*impartially, with respect and courtesy*' and to deal with issues '*objectively*' to ensure that decisions are '*appropriate and fair*'. I do not consider the Practice meets these standards for the reasons outlined above.
32. I consider the failure to appropriately handle the complaint constitutes maladministration. I am satisfied it caused the complainant to experience

uncertainty and frustration, as well as the loss of opportunity to have his complaint handled in accordance with the Practice's Complaints Procedure. Furthermore, it caused the complainant the time and trouble of bringing his complaint to this Office.

33. I uphold this issue of complaint.

## **CONCLUSION**

34. I received a complaint about the Practice's decision to remove the complainant from its Patient List. It was also about how the Practice handled the complaint.

35. In respect of issue one, the investigation established failures in the process the Practice followed when it made its decision to remove the complainant from its Patient List. These failures constituted maladministration. I recognise the maladministration caused the complainant to sustain the injustice of a loss of opportunity to access primary healthcare, and frustration.

36. In respect of issue two, the investigation established there were failures in complaint handling. These failures constituted maladministration and caused the complainant to sustain the injustice of uncertainty, frustration, and loss of opportunity. They also caused the patient the time and effort of bringing this complaint to my Office.

## **Recommendations**

37. I recommend that within **one month** of the date of the final report 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.

38. I further recommend, for service improvement and to prevent future reoccurrence, that within **three months** of the date of the final report the Practice:

- I. shares the findings of this report with its Partners and relevant staff to provide them with the opportunity to reflect on the failings identified;

- II. provides this office with a list of complaints it received over the past two years. In doing so, the Practice should also highlight the outcome of that complaint and if it resulted in the removal of a patient;
- III. provides training to relevant staff to include the following:
  - removal of patients for the reason of a breakdown of the patient/Practice relationship in accordance with the HPSS Regulations; and
  - Complaint handling.
- IV. implements an action plan to incorporate these recommendations and provide me with an update. The Practice should support its action plan with evidence to confirm it took appropriate action (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff read and understood any relevant policies).

**MARGARET KELLY**

**Ombudsman**

**August 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.



## **Appendix 2**

### **PRINCIPLES OF GOOD COMPLAINT HANDLING**

**Good complaint handling by public bodies means:**

#### **1. Getting it right**

- Acting in accordance with the law and relevant guidance, with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learned from complaints.
- Including complaint management as an integral part of service design.
- Ensuring staff are equipped and empowered to act decisively to resolve complaints.
- Focusing the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure in the right way and at the right time.

#### **2. Being customer focused**

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including where appropriate co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

#### **3. Being open and accountable**

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.

- Publishing service standards for handling complaints.
- Providing honest evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

#### **4. Acting fairly and proportionately**

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions and actions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

#### **6. Seeking continuous improvement**

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and the changes made to services, guidance or policy.

