Investigation of a complaint against Belfast Health and Social Care Trust

Report Reference: 202001154

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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: 202001154

Listed Authority: Belfast Health and Social Care Trust

SUMMARY

This complaint was about actions of the Belfast Health and Social Care Trust (the Trust). The patient said he was on a waiting list for a multi disc spinal fusion[1]. However, the investigation did not find any evidence to suggest he was on this list. Instead, the patient was on a surgical waiting list for right LD/S1[2] discectomy[3].

The patient raised concerns about the Spinal Surgeon's communication with both him and his GP while on the surgical list. The Trust later removed him from the list. The patient raised concerns about this decision and believed the Trust removed him due to him raising a complaint about the Spinal Surgeon.

The complaint was not upheld. The investigation established the Spinal Surgeon appropriately communicated with the patient and his GP during the period November 2020 to January 2022. The investigation also established the decision to remove the patient from the surgical waiting list in September 2021 was based on his recent MRI scans and relevant guidance. It did not find any documentary evidence to suggest the patient's complaint about the Spinal Surgeon influenced the Trust's decision.

[1] Spinal fusion is used to join two or more vertebrae together by placing an additional section of bone in the space between them.
[2] Spinal motion segment, also called the lumbosacral joint. This joint helps transfer loads from the spine into the pelvis and legs.
[3]Surgery to remove the part of the disc in the spine that is producing the nerve pain down a patient's leg

THE COMPLAINT

1. I received a complaint about the actions of the Belfast Health and Social Care Trust (the Trust). The complaint was about care and treatment the Trust provided to the patient during the period November 2020 to January 2022.

Background

2. In March 2019 the patient experienced an accident at work. As a result, the patient said he suffers with severe pain and is unable to walk. On 17 April 2020 the patient's GP referred the patient to Orthopaedics/ICATS[4] within the Trust for treatment. Following this referral, the patient had a telephone appointment on 24 April 2020 with an Advanced Practice Physiotherapist on behalf of the Spinal Surgeon. The Spinal Surgeon offered the patient a right L5/S1[5] discectomy[6].

3. On 23 July 2021, the patient received an MRI which showed degenerative changes[7] L4/5[8] and L5/S1. The Spinal Surgeon held a telephone consultation with the patient on 10 September 2021. During this appointment the patient informed the Spinal Surgeon he continued to experience lower back ache, however it was improving with physiotherapy. The Spinal Surgeon discussed the results of the July 2021 MRI scan with the patient and advised the patient he wished to discuss his clinical pathway with his colleagues at the next Spinal MDT[9] meeting. Following the meeting on 14 September 2021, the Spinal Surgeon wrote to the patient's GP to advise the MDT discussion agreed not to consider the patient for surgical intervention. The Trust invited the patient to attend an MDT meeting to discuss his clinical pathway, which he did on 28 January 2022. At this meeting the MDT again agreed not to recommend the patient for surgical intervention.

[4] Orthopedic Integrated Clinical Assessment and Treatment Service (ICATS) is designed to help patients get the most appropriate treatment, care and support.
[5] Spinal motion segment, also called the lumbosacral joint. This joint helps transfer loads from the spine into the pelvis and legs.
[6] Surgery to remove the part of the disc in the spine that is producing the nerve pain down a patient's leg.
[7] Change in the spine that cause the loss of normal structure and/or function.
[8] The L4 and L5 are the two lowest vertebrae of the lumbar spine.
[9] Multidisciplinary teams are the mechanism for organising and coordinating health and care services to meet the needs of individuals with complex care needs.

Issue of complaint

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

   Whether the Trust provided appropriate care and treatment to the patient from November 2020 to January 2022.

INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the Trust all relevant documentation together with its comments on the issues the complainant raised. This documentation included information relating to the Trust's complaints process.

Independent Professional Advice Sought

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

   - A Consultant Orthopaedic Spinal Surgeon in a regional tertiary referral centre for spinal surgery and major trauma unit (IPA).

7. 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

8. 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[10]:

   - The Principles of Good Administration

9. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative

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

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 General Medical Council's Good Medical Practice, updated April 2014 (the GMC Good Medical Practice Guidance);
- General Medical Council's (GMC) Decision making and consent 9 November 2020 (GMC Decision Making Guidance); and
- National Institute for Health and Care Excellence (NICE) Low back pain and sciatica in over 16s: assessment and management NICE guideline [NG59] 30 November 2016 (NICE NG59).

10. 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.

11. I shared a draft of this report with the complainant, the Trust and the clinician whose actions are the subject of the complaint to enable them to comment on the findings and recommendations. The complainant submitted comments in response. I gave careful consideration to his comments before finalising this report.

THE INVESTIGATION

Issue 1: Whether the Trust provided appropriate care and treatment to the patient in November 2020 to January 2022

In particular this will consider:

- The Trust's communication with the patient and his GP; and
- The patient's removal from the surgical waiting list.

Detail of Complaint

12. The patient said he was on a waiting list for a multi disc spinal fusion[11]. He explained when he was on the waiting list, the Spinal Surgeon did not upload

[11] Spinal fusion is used to join two or more vertebrae together by placing an additional section of bone in the space between them.

any information to the Trust's system for his GP. He also said the Spinal Surgeon failed to communicate any information to him or his GP for over a year.

13. The patient also stated his belief that the Spinal Surgeon removed him from the surgical list *'maliciously'* as a result of his complaint.

Evidence Considered

Legislation/Policies/Guidance

14. I considered the following policies and guidance:
    - GMC Good Medical Practice Guidance;
    - GMC Decision Making Guidance; and
    - NICE NG59.

Trust's response to investigation enquiries

Communication

15. The Trust stated the Spinal Surgeon placed the patient on his in-patient waiting list (IPWL) *'for a single lumbar discectomy[12] due to his radicular pain[13] and magnetic resonance imagining (MRI) scan confirming disc pathology[14] at the time of assessment'*. It stated the patient was *'never on the waiting list for a multi disc 'spinal fusion'…this fits with the NICE guideline [NG59]'.*

16. The Trust stated the Spinal Surgeon referred the patient for surgery to help his leg pain; not his back pain. The patient's leg pain improved *'so surgery was no longer appropriate as it will not help his back pain'*.

17. The Trust stated the Spinal Surgeon uploaded the relevant clinic notes onto the patient's Electronic Care Record (ECR) and copies were made to his GP. It stated *'currently, we only send the GP a clinic note once the patient has been added to the IPWL and no further communication happens until surgery is imminent'*. The Spinal Surgeon would only contact the patient if *'directed to by the patient or the General Practitioner (GP) if symptoms have changed'*. The

[12] Surgical repair for ruptured or damaged lumbar spine disc.
[13] Pain that radiates from the spine to other parts of the body along a nerve or its sensory distribution.
[14] One of the discs in the patient's back protrudes out and hits on the nerve causing pain.

Trust stated *'there has been extensive written and telephone communication'* between the patient and other disciplines involved since the onset of his condition.

Removal from surgical waiting list

18. The Trust stated the decision to remove the patient from the IPWL *'was based on a clinical review and review of the MRI scans carried out on 26 January 2020 and 23 July 2021'*. The clinical course with *'intervertebral disc prolapse*[15] *is variable and symptoms may progress, remain or diminish over time…Surgery (discectomy) is usually a last resort and is more likely to be effective to alleviate neurological symptoms (from nerve root compression) than for local pain.*' The problem is successfully resolved with time and conservative, non-surgical treatments in approximately 90 percent of disc prolapse patients.

19. The Trust stated the MDT discussed the patient on 14 September 2021. The patient was unhappy with the MDT outcome. It offered him the opportunity to attend the MDT meeting in person as part of a patient-led discussion about his symptoms and the decision making process. When the patient attended the MDT meeting in January 2022, he had *'full opportunity to query any decision and was content with surgery not being appropriate for his current condition and conservative management being the best option'*.

20. Following the discussion of the patient's treatment at a second MDT meeting, the Trust stated *'the MDT again all agreed not to consider any surgical intervention'*. This is because it is noted the patient had some improvement using conservative treatment and the MDT all agreed the patient should continue with physiotherapy rehabilitation.

Relevant Trust records

21. The Trust provided this Office with the relevant clinical records, relevant MDT meeting minutes along with material relating to the complaint investigation. This Office also obtained records from the patient's GP.

[15] A prolapsed intervertebral disc, or slipped disc, is when the soft gel-like core of a spinal disc bulges out of its tough outer layer.

Relevant Independent Professional Advice

Communication

22. The IPA advised the Spinal Surgeon appropriately recorded in the notes all communication between him and the patient. The Trust stated once a patient is added to a surgical waiting list *'it is not routine practice to be in contact until the surgery is imminent, unless directed to by the patient or the GP if the symptoms have changed'.* The IPA advised *'this is normal practice'*, and there was no requirement to provide the patient with any further information during the period November 2020 to January 2022.

23. The IPA advised *'electronic forms of patient record are used commonly and allow near instant communication'*. The IPA referred to GMC Decision Making Guidance and the requirement to keep a patient's medical records up to date with key information and information leading to a decision. He advised *'the surgeon and Trust appear to have fulfilled this responsibility well'*.

Removal from surgical waiting list

24. The IPA advised the MDT's decision not to offer the patient surgery in September 2021 and January 2022 was appropriate, and *'prevented unnecessary and potentially harmful surgery'*. It is likely *'the disc prolapse has resolved together with the nerve root irritation and subsequently left back pain as the result of degenerate change which is not treatable…this is the natural history of many disc prolapses'*.

25. The IPA did not consider the patient's complaint influenced the Spinal Surgeon's actions in removing the patient from the surgical waiting list. He advised the removal was due to the *'change in the patient's symptoms and the change in the MRI scan findings which has been confirmed at an MDT meeting'*.

Analysis and Findings

Communication

26. The patient said the Spinal Surgeon did not communicate any information to him for over a year, following his addition to the surgical waiting list.

27. I refer to the GMC Good Medical Practice Guidance which requires clinicians to give patients *'the information they want or need to know in a way they can understand'*. I note following the patient's addition to the surgical waiting list (November 2020), he attended an in-patient appointment with the Spinal Surgeon on 7 May 2021 and a telephone appointment with the Spinal Surgeon on 10 September 2021. During these appointments the records document the Surgeon discussed the patient's clinical history and treatment pathway. The patient also advised the Surgeon of his recent symptoms.

28. Following discussion of the patient's case at the MDT meeting on 14 September 2021, the Spinal Surgeon wrote to the patient and his GP on 17 September 2021 outlining the outcome of the MDT discussion. The Trust stated at this time the Spinal Surgeon *'made every effort to talk to [the patient] in person, he tried to call on numerous occasions but unfortunately, he was not able to get in contact with [the patient]'*.

29. The IPA reviewed the relevant records and advised the Spinal Surgeon appropriately recorded all communication between himself and the patient. The IPA advised the Spinal Surgeon's communication with the patient met the GMC's *'standards of communication and team working'*. He further advised there was no requirement to provide the patient with any further information during the period November 2020 to January 2022. I accept this advice. I am satisfied the Spinal Surgeon communicated with the patient in line with the GMC guidelines. I do not uphold this element of the complaint.

30. The patient said that while he was on the waiting list, the Orthopaedic Surgeon did not upload any information to the Trust's system for his GP. He also said the Surgeon failed to communicate any information to his GP for over a year.

31. The Trust stated it only sends a patient's GP a clinic note when the patient is added to a surgical waiting list; no further communication happens until surgery is imminent. The Trust stated the Spinal Surgeon *'dictated his relevant clinic*

notes at the relevant time and copies were made to the GP and uploaded onto the patients [ECR]'. The IPA advised *'this is normal practice'*. He also advised clinicians commonly use electronic forms which allow near instant communication.

32. The GMC Decision Making Guidance requires clinicians to keep a patient's medical records up to date with key information. This includes *'keeping an accurate record of the exchange of information leading to a decision in a patient's record and will inform their future care and help you explain and justify your decisions and actions…this includes decision to take no action'*. The IPA advised the Spinal Surgeon and the Trust fulfilled this responsibility. I accept this advice and consider the records evidence the Trust notified the patient's GP when it was required to do so. I do not uphold this element of the complaint.

33. I acknowledge surgical waiting lists are lengthy and recognise this can cause a patient frustration. In June 2023 I published an 'Own Initiative[16]' investigation report[17] into communication provided to patients following placement on a waiting list. This investigation established Trusts provide patients with little to no communication regarding their progress on a waiting list. I recognise the significant challenges Trusts face and welcome their acknowledgment that improvements are required. I note in response to the June 2023 report Trusts stated their assurance that they have already taken steps to implement my recommendations to improve communication with patients on waiting lists. Whilst there is no requirement to communicate with a patient until surgery is imminent, I would ask the Trust to reflect on my recommendations within the June 2023 report.

Removal from Surgical Waiting List

34. The patient said the Spinal Surgeon removed him from the spinal fusion surgical list *'maliciously'* as he raised a complaint against him. However, the Trust stated the patient *'was never'* on the waiting list for *'multi disc 'spinal fusion''*. The medical records support the Trust's position.

[16] Section 8 of the Public Services Ombudsman Act (Northern Ireland) 2016
[17] Waiting-List-Report.pdf (nipso.org.uk)

35. Instead, the Trust placed the patient on a waiting list in November 2020 for a single discectomy due to his radicular pain. It removed the patient from the list in September 2021. I considered the Trust's reasons for its decision.

36. The records document the patient received an MRI on 23 July 2021 which showed *'degenerative changes L4/5 and L5/S1'*. The records also document the patient complained of lower back pain during his telephone appointment with the Spinal Surgeon. I note the MDT met on 14 September 2021 and reviewed the patient's recent MRI scan results from January 2021. The Trust removed the patient from the IPWL following this meeting because the patient *'would not benefit from operative intervention for his back and leg pain'*.

37. The Trust further stated the clinical course with '*disc prolapse is variable and symptoms may progress, remain or diminish over time'*. Discectomy surgery is a '*last resort'*, which is in accordance with NICE NG59. This guidance states *'do not offer spinal fusion for people with low back pain unless as part of a randomised controlled trial'*.

38. The IPA advice supports the Trust's position. He advised *'it is likely'* that from November 2020 to September 2021, the patient's disc prolapse *'resolved together with the nerve root irritation'*. This meant that the *'degenerative change'* was *'not treatable'*. The IPA based his advice on the patient's later MRI scans which no longer showed a disc prolapse. He advised, '*This is the natural history of many disc prolapses'*.

39. The complainant raised a concern that the Trust removed him from the list due to him raising a complaint about the Spinal Surgeon. Having reviewed the records, I have not found any documentary evidence to support the complainant's view. I also note the IPA's advice that '*it is most likely that it was the change in the patient's symptoms and the change in the MRI scan findings which as been confirmed at an MDT meeting [and] two other specialities (pain management and neurosurgery)'*.

40. Overall I am satisfied the Spinal Surgeon's decision to remove the patient from the surgical waiting list was appropriate, based on scan results, and on relevant guidance. I have also not found any documentary evidence to suggest the

patient's complaint influenced the decision. I do not uphold this element of the complaint.

CONCLUSION

41. I received a complaint about care and treatment the Belfast Health and Social Care Trust provided to the patient during the period November 2020 to January 2022. I did not uphold the complaint for the reasons outlined in this report.

42. I acknowledge the patient's frustration with his symptoms and the limitations in the ability to cure back pain. I hope this report offers some reassurance that the Spinal Surgeon provided him appropriate care and treatment during this period.

Margaret Kelly
Ombudsman **2023**

Appendix One

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and 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 Two

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and 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 learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on 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.

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 co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

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.

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 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.

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.

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 the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.