Northern Ireland
Public Services
Ombudsman

Investigation Report

Investigation of a complaint against the Belfast Health and Social Care Trust

NIPSO Reference: 20564

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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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SUMMARY

The complaint concerned the care and treatment provided to the complainant by the Belfast Health & Social Care Trust (the Trust), between December 2010 and July 2018. The complainant believed that the Trust did not adequately assess or treat the orthopaedic condition in his left shoulder. He also complained that the Trust did not provide him with an opportunity to comment on minutes of a meeting held on 22 November 2017.

The investigation established that the care and treatment provided to the complainant by the Trust during this time was appropriate. It also established that the Trust provided the complainant with an adequate opportunity to comment on the records held in relation to the meeting on 22 November 2017.

However, the investigation established that the Trust failed to provide the COS2 with the relevant information prior to the consultation on 14 November 2017.

I made a number of recommendations including an apology to the complainant for the failings identified, and recommendations to help improve a patient's continuity of care.

I am pleased to note the Trust accepted my finding and recommendations.

THE COMPLAINT

1. The complaint concerns the care and treatment provided to the complainant by the Trust. The complainant believes that he was adequately assessed nor treated appropriately for the orthopaedic condition in his left shoulder.

2. The complainant has a detailed and complex history of left shoulder problems, dating back to 2008. In July 2009 and January 2010, he underwent surgery with a private healthcare organisation, as part of the Trust's waiting list initiative. Following submission of a complaint in May 2011, the Trust completed an investigation into the complainant's surgeries and subsequent discharge. This investigation will therefore focus on the care and treatment the Trust provided to the complainant post January 2010.

3. In December 2010, the complainant explained that he was seen by a Consultant Orthopaedic Surgeon (COS1) at the Trust. At this time, examinations were undertaken, and the complainant was discharged in December 2013. In June 2016, the complainant advised that he was referred to another Trust Consultant Orthopaedic Surgeon (COS2). He complained that the COS2 agreed with the COS1's assessment, without adequately examining or assessing him.

4. Following this review, the complainant stated that he had to pay for a private MRI in August 2016, which evidenced his concerns about the problems in his left shoulder. He believes that only then the Trust offered him surgery, which took place in March 2018. Despite surgery, the complainant advised that he has remained in chronic pain and is debilitated. The complainant said that he seeks the truth in relation to the care and treatment the Trust provided to him.

Issues of complaint

5. The issues of the complaint accepted for investigation were:

Issue 1: Whether the care and treatment provided by the Trust to the complainant in relation to his shoulder, between December 2010 and July 2018 was reasonable?

Issue 2: Whether the Trust provided the complainant with a reasonable opportunity to comment on the record of the meeting on 22 November 2017?

INVESTIGATION METHODOLOGY

6. In order to investigate the complaint, the Investigating Officer obtained from the Trust all relevant documentation together with the Trust's comments on the issues raised by the complainant. This documentation included information relating to the Trust's handling of the complaint. A draft copy of this report was shared with the Trust and the complainant for comment and a check on factual accuracy.

Independent Professional Advice

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

   - **A Consultant Shoulder and Upper Limb Surgeon**, MBBS, Master of Philosophy in the Faculty of Medicine, FRCS (Trauma & Orthopaedics) (OS IPA). Elective practice encompasses almost exclusively shoulder and upper limb surgery. Has a weekly shoulder and upper limb clinic, and performs regular weekly elective theatre lists, which are approximately 90% weighted towards shoulder surgery.

8. The information and advice which have informed my findings and conclusions are included within the body of my report. The OS IPA has provided me with 'advice'; however how I have weighed this advice, within the context of this particular complaint, is a matter for my discretion.

Relevant Standards

9. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

10. The general standards are the Ombudsman's Principles[1]:

- The Principles of Good Administration
- The Principles of Good Complaints Handling
- The Public Service Ombudsman's Principles for Remedy

11. The specific standards are those which applied at the time the events occurred and which governed the exercise of the professional judgement of Trust and individuals whose actions are the subject of this complaint.

12. The specific standards relevant to this complaint are:

- General Medical Council's (GMC) Good Medical Practice, dated 13 November 2006 (2006 GMC Guidance);
- GMC's Good Medical Practice, dated March 2013 (2013 GMC Guidance); and
- Policy and Procedure for the Management of Comments, Concerns, Complaints & Compliments, operational March 2017 (Trust's Complaints Policy).

13. I have not included all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

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

INVESTIGATION

Issue 1: Whether the care and treatment provided by the Trust to the complainant in relation to his shoulder, between December 2010 and July 2018 was reasonable?

Detail of Complaint

14. The complainant has a detailed and complex history of left shoulder problems, dating back to 2008. In July 2009 and January 2010, he underwent surgery with a private healthcare organisation, as part of the Trust's waiting list initiative. The complainant was subsequently discharged to his GP when the funding scheme expired.

15. In December 2010, the complainant explained that his GP referred him to the COS1, following increasing pain in his shoulder. At this time, examinations were undertaken, and the complainant was discharged in December 2013. Subsequently, in June 2016, the complainant stated that he was referred to the COS2. He complained that the COS2 agreed with the COS1's assessment, without adequately examining or assessing him.

16. Following this consultation, the complainant stated that he had to pay for a private MRI in August 2016, which evidenced his concerns about the problems in his left shoulder. He believes that only then the Trust offered him surgery, which took place in March 2018.

17. Despite surgery, the complainant stated that he has remained in chronic pain and is debilitated. He believes that the Trust failed to provide him with the appropriate care and treatment for the orthopaedic condition in his left shoulder. The complainant stated that he seeks the truth in relation to the care and treatment provided to him during this time.

Evidence Considered

18. I considered the 2006 GMC Guidance, specifically Standards 2 and 22, which state:

'2 Good clinical care must include:

a. *adequately assessing the patient's conditions, taking account of the history (including the symptoms, and psychological and social factors),the patient's views, and where necessary examining the patient*
b. *providing or arranging advice, investigations or treatment where necessary*
c. *referring a patient to another practitioner, when this is in the patient's best interests…*

22 To communicate effectively you must:

a. *listen to patients, ask for and respect their views about their health, and respond to their concerns and preferences*
b. *share with patients, in a way they can understand, the information they want or need to know about their condition, its likely progression, and the treatment options available to them, including associated risks and uncertainties…'*

19. I also considered the 2013 GMC Guidance, specifically Standards 15 and 16, which state:

'15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a. *Adequately assess the patient's condition, taking account of their history… where necessary, examine the patient*
b. *Promptly provide or arrange suitable advice, investigations or treatment where necessary*
c. *Refer a patient to another practitioner when this serves the patient's needs...*

16 In providing clinical care you must:

a. Prescribe drugs or treatment… only when you have adequate knowledge of the patient's health…'

20. In addition I considered Standards 49 and 55 of the 2013 GMC Guidance, which state:

'49 You must work in partnership with patients, sharing with them the information they will need to make decisions about their care, including:

a. Their condition, its likely progression and the options for treatment, including associated risks and uncertainties…

55 You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should…

b. offer an apology.'

Trust's Response to investigation enquiries

21. As part of investigation enquiries the Trust was provided with an opportunity to respond to the complainant's comments. The Trust stated that the complainant's GP referred him to Orthopaedics at Musgrave Park Hospital, in July 2010. On 6 December 2010, it stated that the COS1 reviewed the complainant *'and referred [him] for Nerve conduction studies/MRI report/ cervical spine and ultrasound aspiration report.'*

22. On 26 May 2011, the Trust stated that the complainant '*first approached [it] to lodge a complaint relating to his surgery with [the private healthcare organisation in 2009/ 2010] and the lack of aftercare provided*[2]*'.* *S*ubsequently, on 1 October 2012, the Trust stated that the COS1 reviewed the complainant again, and *'bloods [were] requested from the GP to be done within three weeks' time*.' On 16 December 2013, the Trust stated that the complainant was *'seen again [by the COS1]… and discharged.'*

[2] This investigation examines the care and treatment provided to the complainant by the Trust, between December 2010 and July 2018 only.

23. On 21 March 2016, the Trust stated that a private consultant referred the complainant to Trauma & Orthopaedics.

21 June 2016

24. The COS2 stated that this was the first time he had seen the complainant, *'he was not sure why he was attending the clinic that morning. He reported to me that his shoulder had previously been evaluated and was last seen by [the COS1] and was told there was nothing further that could be done so he was happy to be discharged.'*

25. In relation to the complainant's belief that the COS2 *'agreed with previous opinion without examining [him]',* the COS2 advised that *'examination at this clinic attendance is recorded as showing multidirectional instability. However, as this gentleman was not having any ongoing complaints which were significant enough to warrant further investigation or treatment he was happy to be discharged.'* In addition, the COS2 advised that the complainant *'had recently been admitted to intensive care with Swine Flu'*, which *'would have put him at very high risk for any surgical intervention at this juncture if it had been contemplated.'*

26. Subsequently, on 22 August 2016, the Trust said that the complainant underwent a private *'MRI arthroscopy[3] and [was] referred… back into the Trust for an Orthopaedic opinion.'* The Trust stated that the complainant submitted a further complaint on 1 October 2017. The Trust stated that the complainant *'requested to meet with orthopaedic services to discuss [the private MRI arthroscopy] and attempt to resolve his ongoing concerns regarding treatment. Following receipt of [the complainant's] complaint it was found that no referral had been received [from the private consultant].'* The Trust stated that '*in an attempt to resolve the complaint, staff added [the complainant] to the waiting list [on 10 October 2017] and backdated his referral to August 2016.'*

[3] An arthrogram uses imaging equipment to evaluate a joint like the shoulder. It is a two-part procedure consisting of a contrast injection into the joint, followed by an MRI or CT scan of the joint.

27. The Trust stated that the complainant contacted the Complaint's Department again on 3 November 2017, '*to express his dissatisfaction with regards to the lack of treatment and care since 2010. At this time staff felt it would be beneficial to meet with [the complainant] to discuss his concerns and a meeting was scheduled for 22 November 2017.'*

14 November 2017

28. At this time, the COS2 stated that the complainant had *'an ongoing complaint in regard to previous care (under another surgeon) and [he had] sought an opinion privately from… [another private] Consultant Orthopaedic Surgeon.'* The COS2 advised that *'no information pertaining to was made available to me and I explained this to [the complainant]. Furthermore, I apologised to him that this clinic attendance would appear to be a waste of his time and my time given the lack of this information. I did take the time to try and obtain information in regard to this.'*

29. The COS2 stated that *'I explained to [the complainant] that since his original surgery was performed by [a Private Healthcare Organisation] and [the private surgeon] had information to the nature of the suture anchors used in his surgery, and it was felt that a diagnostic arthroscopy was a reasonable course of action, it was necessary for me to consider all of the information at hand in a fashion whereby I had time to review this before meeting [him] again, I also suggested that [the complainant] be allocated additional time for his subsequent appointment.'*

30. The COS2 stated that *'this consultation raised several issues with regards to further decision making:*

    1. *[The complainant] reported a private attendance with a neurologist*
    2. *[He] reported having previously attended a Pain Clinic and had not been there for some time*
    3. *ICU [Intensive Care Unit] admission, apparently Ulster Hospital and had been discharged from follow-up. (Information regarding this*

episode I indicated would be required for any pre-operative assessment)

4. *Various clinics letters/ attendance documents should be made available and I should have been given the opportunity to review these beforehand.*

31. The COS 2 stated *'at this point, I wrote to the Clinical Director… and Service Managers… regarding the unsatisfactory nature of the appointment/ clinic attendance and that if it was that surgical intervention was subsequently deemed appropriate that this would need to be facilitated accordingly.'* In response, the Trust stated that at this time, the complainant was '*scheduled to meet with [the Clinical Director], [the Service Manager] and complaints on 22 November 2017… [The Service Manager] agreed to discuss [the complainant's] case with [the COS2] in an attempt to get him a further appointment and if further treatment was required, they would try to expedite his treatment.'*

30 January 2018

32. At this consultation, the COS2 stated that he had *'a long conversation with [the complainant] and his wife… the examination of [the complainant] is specifically documented. I go on to explain that I agree with [the COS1] as to the merits of diagnostic arthroscopy. I re-iterated the risks and benefits of surgical intervention. I also have a frank discussion with regards to his rather protracted situation and how he could be no different from this intervention, and while I expressed the view that he would hopefully be better there was a small possibility he could be worse.'*

33. In addition, the COS2 advised that *'rehabilitation and the importance of physiotherapy and the need to engage in this was explained to [the complainant]. As he was happy to be listed for surgery his name was added to the waiting list for left shoulder arthroscopy.'*

34. The complainant's surgery was undertaken on 3 March 2018. The Trust stated that *'it should be noted that [the complainant] received his procedure*

within a short timeframe as it was agreed [at the meeting on 22 November 2017] that staff would do all they could to expedite any future care and treatment.'

24 April 2018

35. The COS2 advised that '*this was the initial post-operative review appointment at approximately six week's post-op'*. *He stated* that at this consultation he discussed *'at length with [the complainant] and his wife with regards to the operative findings and the surgery carried out. Furthermore, I explained to him the likely time-scale in terms of recovery and re-iterated the importance of physiotherapy.'* At this time, the COS2 advised he wrote to '*a specialist shoulder physiotherapist with regards to [the complainant's] care.'*

5 June 2018

36. At this consultation, the COS2 stated that *'it is noted that [the complainant's] wounds are well healed and that examination reveals [he] had got an excellent range of movement and that he continues to work with the specialist shoulder physiotherapist.'* The COS2 stated that he recorded *'the plan to review [the complainant] in a further six weeks for clinical assessment.'*

37. At this point, the COS2 stated he was on sick leave for several months, until December 2018. The Trust stated that the COS2's *'post-operative patients or any patient in his caseload presenting with a case of emergency was reviewed by another Upper Limb Surgeon within the Belfast Trust. Orthopaedic Services were unable, due to resourcing and availability of locum shoulder surgeons, to provide sick leave cover to take over [the COS2's] waiting list or review appointments.'*

38. The COS2 stated he next reviewed the complainant on 29 January 2019, where he *'reported to me for the first time a post-operative problem with pain. At this juncture I have to question the status of the repair and that MR Arthrogram would be indicated. However, as [the complainant] has a complex situation in terms of his shoulder I indicate that regardless of MR Arthrogram findings further surgical interventions it may or may not be appropriate to*

consider further surgical intervention. As he had undertaken research I asked him if at any point a shoulder fusion operation had been contemplated. While at this time I was not considering this as a surgical option I was trying to explore with him his symptomatology as to whether movements are causing pain or if it is pure pain causing his difficulties.'

39. The COS2 stated that the complainant *'was going to explore the possibility of getting the MR arthrogram privately, therefore I supplied him with a letter (to whom it may concern) in order to facilitate this in addition to requesting this within the NHS system.'*

Overall

40. The Trust stated *'staff agreed that [the complainant] had a difficult care pathway and apologised for his experiences.'* However, it stated that '*the clinical decisions were correct at the time and they [do] not feel that there was any negligence.'*

Independent Professional Advice

41. As part of investigation enquiries, I received independent professional advice from the OS IPA. The OS IPA considered the Trust's care and treatment of the complainant between December 2010 and July 2018. I have included the OS IPA's advice in Appendix Three. In addition, I have highlighted the key dates in relation to the complainant's care and treatment between this timeframe below.

42. The OS IPA advised that the complainant *'has had problems with his left shoulder since 2008… [He] has had three operations on 9 July 2009, 8 January 2010 and 3 March 2018.'* On 27 July 2010, the OS IPA advised that the complainant's GP referred him to a Consultant Orthopaedic Surgeon ('COS1') *'with increasing pain and inability to work due to pain in his left shoulder.'*

6 December 2010

43. At the consultation, the OS IPA advised that the COS1 '*obtained a detailed history'* and *'performed a clinical examination of [the complainant's] shoulder.'* The OS IPA advised that *'previous scars around the left shoulder'* were noted, and there were *'clinical signs indicative of an unstable [left] shoulder in the front and back.'* In addition, the OS IPA advised that there was *'evidence of joint hyperlaxity*[4] *affecting both wrists and thumbs, also MCP [metacarpophalangeal] joints of his fingers and mild hyperlaxity of both elbows.'*

44. As a result, the OS IPA advised that the complainant was *'sent for x-rays and MR arthrogram of his left shoulder,'* The OS IPA advised that *'given the complex history and clinical findings this is regarded as the gold standard investigation… the investigations ordered were satisfactory… I do not feel it is mandatory to investigate further.'* In addition, the OS IPA advised that the COS*1 'mentioned that [the complainant's] clinical issues may be discussed in the shoulder conference. This is a perfectly reasonable option given the complexity of [the complainant's] clinical problems.'*

45. An MR scan was performed on 25 March 2011. The OS IPA advised that *'the results indicated evidence of extensive previous surgery… injury to soft tissues and bone of the glenoid (socket of the shoulder)… some softening of cartilage of the socket and inflammation of the tendons in the shoulder. There were also some metal artefacts noted.'*

4 July 2011

46. The OS IPA advised that the purpose of this consultation was to discuss the complainant's MR scan results. The OS IPA advised that *'a thorough clinical examination took place',* which identified *'no signs of instability, signs of nerve entrapment but ongoing pain… [and] some nerve symptoms in his left arm.'*

[4] An unusually large range of movement.

47. As a result, the OS IPA advised that the complainant was referred *'for appropriate investigations in the form of blood tests (to rule out infection), nerve tests to exclude a nerve being trapped in the wrist and MR scan of the neck to rule out any referred pain from neck to shoulder', and 'ultrasound of the shoulder.'* The OS IPA advised that the COS1's '*approach was good and thorough'.*

1 October 2012

48. At this consultation, the OS IPA advised that the COS1 discussed the results of the investigations with the complainant. The OS IPA advised that '*nerve tests showed no significant abnormality',* the *'MR of C Spine (neck) showed mild narrowing of the passage through which nerves travel at multiple levels. However it did not show gross nerve compression', 'blood tests were normal'* and the shoulder ultrasound showed *'negative aspirate (no fluid of the joint).'*

49. In addition, the OS IPA advised that a clinical examination was repeated, and *'nothing significant was noted in the shoulder or neck.'* The OS IPA advised that *'further assessment with arthroscopy (keyhole operation to assess the shoulder with a camera) was offered. However, [the COS1] also cautioned that he could not guarantee that he could get rid of all the symptoms that [the complainant] had.'* The OS IPA advised that the COS1 *'assessed [the complainant] appropriately and all investigations that were relevant were performed.'*

50. On 25 October 2012, the OS IPA advised that the COS1 *'reviewed the results of the blood tests'* requested at the previous consultation, which *'detected slightly raised white cell count (indicative of inflammatory or infective process.'* The OS IPA advised that the complainant was asked *'to perform three consecutive blood tests to ensure this was not significant. If there was infection it would be shown in all the blood samples. In my view [the COS1] did everything that any competent clinician would have done given these circumstances.'* The OS IPA advised that a *'white cell scan… was requested on 22 March 2013.'*

16 December 2013

51. At this consultation, the OS IPA advised that the complainant expressed *'his ongoing symptoms even after being seen by the pain team.'* The OS IPA advised that the complainant was examined, and advised that his white cell scan was *'negative, indicative of no active infection.'* In addition, the OS IPA advised that the complainant had another x-ray which *'showed anchors in place. The shoulder joint itself was satisfactory.'* The OS IPA advised that the COS1 *'assessed and investigated [the complainant] thoroughly.'*

52. The OS IPA also advised that the complainant was '*offered a second opinion or a referral back to his original consultant… [The COS1] was explained the limits of what could be achieved by further orthopaedic intervention.'* The OS IPA advised that the complainant considered his options and decided *'to leave things alone.'* The OS IPA advised that *'it was appropriate for the [COS1] to discharge [the complainant] under these circumstances.'*

21 June 2016

53. The OS IPA advised that *'[the complainant] had been seen privately, which resulted in a referral for this consultation.'* The OS IPA advised that the clinic letter records that the COS2 and the complainant were unsure what the purpose of this consultation was, and that *'only [a] clinical examination was carried out'.* The OS IPA advised that *'no investigations were requested as [the complainant] was happy to leave things alone.'* On review, the OS IPA advised that no further investigations were required, and that it was appropriate for the complainant to be discharged.'

14 November 2017

54. At this consultation, the OS IPA advised that the COS2 was *'unsure why [the complainant] was in his clinic as the necessary information had not been sent to him.'* The OS IPA advised that no investigations were ordered at this appointment, as the COS2 appropriately requested all of the complainants notes first, *'to establish the facts on what had happened with [the complainant] previously.'*

30 January 2018

55. The OS IPA advised that this consultation was scheduled following the COS2's review of the complainant's medical notes. The OS IPA advised that a physical examination was performed and *'appropriate' 'investigation was planned in the form of a diagnostic arthroscopy (keyhole operation with a camera to look into the shoulder joint and if need be remove any metal anchors if they were prominent).'* The OS IPA advised that the complainant *'was consented appropriately for this procedure after discussing the pros and cons of surgery including the risk factors of the procedure.'*

3 March 2018

56. On this date, the OS IPA advised that a keyhole operation took place, which involved '*removal of old anchors (screws which are inserted into the bone to anchor the soft tissues to the bone and revision labral repair).'* The OS IPA advised that *'it was noted during surgery that the previous repair had come undone hence a revision repair was performed. [The COS2] was happy with the outcome of surgery at the end.'*

24 April 2018

57. The OS IPA advised that this was *'a routine post-operative review to check whether the wounds had healed. At this appointment [the COS2] discussed the operation in detail to [the complainant] and his wife.'* The OS IPA advised that there was a physical examination of the complainant's shoulder, and *'he was referred for rehabilitation and physiotherapy.'* On review, the OS IPA advised that *'there was no need for further investigation as the patient was progressing well following the surgery.'*

5 June 2018

58. At this consultation, the OS IPA advised that a *'physical examination was carried out and [the complainant] was noted to have excellent range of motion and generally doing well'* post-surgery. The OS IPA advised that *'there was no indication for further investigation.'*

59. The OS IPA advised that the complainant was next reviewed by the COS2 on 29 January 2019, as the COS2 had been off on sick leave. The OS IPA advised 'I am uncertain whether anything would have changed even if [the complainant] had seen another surgeon in the interim… besides on 5 June [2018] [the complainant] was noted to be doing well.' The OS IPA advised *'I personally do not think it would have added any value'* if the complainant had been reviewed earlier.

Overall

60. On review, the OS IPA noted that the complainant was *'treated by a number of clinicians. Sadly due to waiting list pressures he had been bounced from one place to other, thereby resulting in loss of continuity of care… If he had stayed in one place and had been treated by fewer clinicians he may have had more trust in the professionals. Whether this may have led to better outcomes is speculative given the complexity of the case.'*

61. In addition, the OS IPA advised *'I could see there had been some miscommunication. This has led to several complaints. Better communication would have resulted in the patient trusting the system more. It would have led to less travel and disruption for the patient.'*

62. However, the OS IPA advised that *'I have not identified any mistreatment or inappropriate management of the patient. All the clinicians have done their best to assess the patient appropriately, conduct relevant investigations and surgeries have been performed well too.'* The OS IPA also advised that *'the management and service team have taken the effort to address the complaints to their best ability. Seldom are these measures satisfactory for the patient involved, given the complexity of the problem and all of the issues surrounding his care.'*

Responses to draft report

63. In response to the draft report, the Trust stated *'Orthopaedic Services accepts that COS2 should have had the full detailed picture of [the complainant's] care prior to his consultation… which would have included all detailed notes. It is*

worth noting however that a significant amount of detail would have been from private notes or independent sector information, which would not routinely be available for new patient consultations. This is something Orthopaedic services are going to review with the clinicians to examine the level of detail, which should be provided to Orthopaedic Consultants in advance of outpatient appointments.'

64. The Trust also stated that *'the learning identified from this process will be drafted by the Service Manager into a learning letter and shared through Trust Governance Processes as recommended in the draft report.'*

Analysis and Findings

65. As part of investigation enquiries, I examined the Trust's care and treatment of the complainant between December 2010 and July 2018. I note the complainant believes that he has not been adequately assessed nor treated appropriately for his shoulder during this time. On review of the OS IPA's advice and the medical records, I note the complainant has a complex history of left shoulder pain, dating back to 2008. In July 2010, I note the complainant's GP referred him to the Trust, as a result of *'increasing pain'* in his left shoulder.

6 December 2010

66. At this consultation, as per Standard 2a of the 2006 GMC Guidelines, I note the OS IPA advised that the COS1 *'obtained a detailed history'* and *'performed a clinical examination of [the complainant's] shoulder.'* As a result of the findings, I note the OS IPA and the Trust advised that the COS1 referred the complainant for x-rays and a MR arthrogram of his left shoulder. In addition, I note the OS IPA advised that the COS1 *'mentioned that [the complainant's] clinical issues may be discussed in the shoulder conference.*

67. I refer to standards 2a and 2b of the 2006 GMC Guidelines, which state that doctors must adequately assess the patient and arrange investigations where necessary. On review, I accept the OS IPA's advice that the COS1's actions

at the consultation were '*reasonable*' and that *'the investigations ordered were satisfactory'.*

4 July 2011

68. I note the OS IPA advised that the COS1 discussed the results of the complainant's MR scan, conducted on 25 March 2011, at this consultation. In addition, I note the OS IPA advised that, as per Standard 2a of the 2006 GMC Guidelines, *'a thorough clinical examination'* was conducted, which identified *'ongoing pain… [and] some nerve symptoms in [the complainant's] left arm.'* As a result, I note the OS IPA advised that, as per Standard 2b of the 2006 GMC Guidelines, the complainant was *'appropriate[ly]'* referred for further investigations, including blood tests, nerve conduction studies, an ultrasound of the shoulder, and an MR scan of the neck. I accept the OS IPA's advice that the COS1's *'approach was good and thorough'.*

1 October 2012

69. At this consultation, I note the OS IPA advised that the COS1 discussed the results of the previously requested tests with the complainant. I also note the OS IPA advised that a clinical examination was *'appropriately'* repeated, which showed nothing significant in the complainant's neck or shoulder. In addition, I note the OS IPA advised that a further arthroscopy was offered to the complainant, and as per Standard 22(b) of the 2006 GMC Guidelines, the COS 1 *'cautioned that he could not guarantee that he could get rid of all the symptoms.'* I note the Trust also stated that '*bloods [were] requested from the GP to be done within three weeks' time*.' On review, I accept the OS IPA's advice that '*all investigations that were relevant were performed.'*

70. On 25 October 2012, I note the OS IPA advised that the COS1 reviewed the complainant's blood tests, and as he had a '*slightly raised white cell count*', requested *'three consecutive blood tests.'* I note the OS IPA advised that the COS1 *'did everything that any competent clinician would have done given these circumstances.'* I accept the OS IPA's advice.

16 December 2013

71. At this consultation, I note the OS IPA advised that the complainant was examined, and advised by the COS1 that his white cell count was '*negative'*. I note the OS IPA also advised that an x-ray showed that the complainant's shoulder joint *'was satisfactory'.* On review, I accept the OS IPA's advice that the COS1 *'assessed and investigated [the complainant] thoroughly'* at this consultation.

72. In addition, I note the OS IPA advised, as per Standard 2(c) of the 2006 GMC Guidelines, the COS1 offered the complainant '*a second opinion or a referral back to his original consultant.'* In addition, as per Standard 22(b) of the 2006 GMC Guidelines, I note the OS IPA also advised that the COS1 '*explained the limits of what could be achieved by further orthopaedic intervention.'* I note the OS IPA advised that the complainant opted *'to leave things alone'.* I refer to Standard 22(a) of the 2006 GMC Guidelines, which states that doctors must *'listen to patients, ask for and respect their views about their health.'* Therefore, I accept the OS IPA's advice that *'it was appropriate… to discharge'* the complainant.

73. Subsequently, I note the Trust advised that the complainant was referred back to Trauma & Orthopaedics by a private consultant on 21 March 2016.

21 June 2016

74. At this consultation, I note the complainant believes that the COS2 agreed with the COS1's assessment, without adequately assessing or examining him. On review of the records, I note the OS IPA advised that both the complainant and the COS2 were unsure as to the purpose of this consultation. As per Standard 15a of the 2013 GMC guidance, I note the COS2 conducted a clinical examination of the complainant, which identified *'multidirectional instability. However, as [the complainant] was not having any ongoing complaints which were significant enough to warrant further investigation or treatment he was happy to be discharged.*'

75. On review, I note the OS IPA advised that it was *'appropriate'* for *'only [a] clinical examination'* to be performed at this consultation. In addition, I note

the OS IPA agreed that it was '*appropriate'* for the COS2 not to request further investigations and to discharge the complainant as the complainant '*was happy to leave things alone.'* I accept the OS IPA's advice.

76. Following this consultation, I note the complainant stated that he paid for a private MRI in August 2016, which evidenced the concerns he had in relation to his left shoulder. As a result, I note the OS IPA advised that the complainant was referred back to the Trust for an orthopaedic opinion. However, I note the Trust stated that only after the complainant submitted a complaint to the Trust on 1 October 2017, did it become apparent that a referral had not been received in August 2016. On recognition of this, I note the Trust stated that it added the complainant to the waiting list, and backdated his referral to August 2016. I refer to the Second Principle of Good Administration, *'being customer focused',* which states that public bodies must *'respond flexibly to the circumstances of the case'.* I consider that the Trust demonstrated flexibility in backdating the complainant's referral to the date it was originally submitted, to help expedite his treatment, and resolve his complaint.

77. I note the complainant believes that only after this private MRI in August 2016, did the Trust offer him surgery. I note the OS IPA advised that the complainant's previous consultation with the COS2 had been appropriate, and that no further investigations were required. In addition, I note the COS2 advised that as the complainant had recently been in intensive care, he would have been *'at very high risk for any surgical intervention if it had been contemplated*.' Therefore, I consider that it was appropriate for the COS2 not to have referred the complainant for surgery at the consultation in June 2016.

14 November 2017

78. On this date, I note the COS2 advised that he was aware the complainant had an ongoing complaint with the Trust in relation to his previous care, however *'no information pertaining to this was made available to'* him. As per Standard 55 of the 2013 GMC Guidelines, I note the COS2 advised that he apologised

to the complainant *'that this clinic attendance would appear to be a waste of his time… given the lack of information'*

79. Subsequently, I note the OS IPA advised that the COS2 requested all of the complainant's notes *'to establish the facts'*, prior to requesting further investigations. In response, I note the Trust stated that the Service Manager also *'agreed to discuss [the complainant's] case with [the COS2] in an attempt to get him a further appointment and if further treatment was required, they would try to expedite his treatment.'*

80. I refer to Standard 15 of the GMC Guidance, which states that if doctors *'assess, diagnose or treat patients' they must take 'account of their history'*. In addition, I refer to Standard 16 of the GMC Guidance, which states that doctors must *'provide drugs or treatment… only when you have adequate knowledge of the patient's health.*' Therefore, I accept the OS IPA's advice that it was appropriate for the COS2 to request further information before conducting investigations.

81. However, I am critical of the Trust's lack of internal communication and organisation prior to this consultation. I consider that it should have provided the COS2 with the required information prior to meeting with the complainant. I refer to the First Principle of Good Complaint Handling, *'getting it right',* which states that *'staff should be properly equipped and empowered to put things right promptly where something has gone wrong.'* I consider the Trust's failure to provide the COS2 with the relevant information constitutes maladministration. As a result, I consider that the complainant suffered the injustice of inconvenience at having to reschedule his appointment. I will address remedy in the conclusion of the report.

82. I am pleased to note the Trust stated '*that COS2 should have had the full detailed picture of [the complainant's] care prior to his consultation… This is something Orthopaedic services are going to review with the clinicians to examine the level of detail, which should be provided to Orthopaedic Consultants in advance of outpatient appointments.'* I also note the Trust

advised that *'the learning identified from this process will be drafted by the Service Manager into a learning letter and shared through Trust Governance Processes as recommended in the draft report.'*

30 January 2018

83. Following receipt of the complainant's records, I note the OS IPA advised that a physical examination was performed at this consultation. I note the COS2 stated that he advised the complainant that he agreed with the COS1's *'merits of diagnostic arthroscopy'*, and the OS IPA advised that this was an *'appropriate'* investigation. I note the COS2 advised that as the complainant *'was happy to be listed for surgery his name was added to the waiting list'.*

84. As per Standard 49(a) of the 2013 GMC Guidelines, I note the OS IPA also advised that the COS2 informed the complainant of the pros and cons of this procedure, *'including the risk factors'.* I note the COS2 stated that he informed the complainant of the importance of engaging in rehabilitation and physiotherapy. On review, I accept the OS IPA's advice, that the COS2's actions at this consultation were appropriate.

3 March 2018

85. The complainant underwent surgery on 3 March 2018. I acknowledge the Trust stated that the complainant received this procedure '*within a short timeframe as it was agreed that staff would do all they could to expedite any future care and treatment'* (see paragraph 74). In relation to the surgery, I note the OS IPA advised that it involved the *'removal of old anchors',* as *'the previous repair had come undone… a revision repair was performed… [and the COS2] was happy with the outcome of the surgery'.*

24 April 2018

86. This was a review consultation following the complainant's surgery. I note the OS IPA advised that the COS2 discussed the operation in detail with the complainant and his wife, and referred him *'for rehabilitation and physiotherapy.'* I note the OS IPA advised that as the complainant had

progressed well following surgery, further investigation was not required. On review, I accept the OS IPA's advice.

5 June 2018

87. On this date, as per Standard 15(a) of the 2013 GMC Guidelines, I note the OS IPA advised that the COS2 conducted an examination of the complainant. I note the OS IPA advised that the complainant was noted to have an *'excellent range of motion and [was] generally doing well'* post-surgery. On review, I accept the OS IPA's advice that *'there was no indication for further investigation.'* I note the COS2 advised that he planned to review the complainant *'in a further six weeks for clinical assessment'.* However, the COS2 stated that he went on sick leave for several months.

88. I note the complainant was next reviewed by the COS2 on 29 January 2019. At this consultation, I note the COS2 advised that the complainant *'reported to me for the first time a post-operative problem with pain.'* I note the OS IPA advised '*I am uncertain whether anything would have changed even if [the complainant] had seen another surgeon in the interim… besides on 5 June [2018] [the complainant] was noted to be doing well.'* On review, I did not identify any evidence demonstrating that the complainant had contacted the Trust during this time to advise of ongoing pain. I also note the OS IPA advised *'I personally do not think it would have added any value'* if the complainant had been reviewed earlier. On consideration, I accept the OS IPA's advice.

Overall

89. I note the complainant advised that despite the surgery, he has remained in chronic pain and is debilitated. On review, I note the OS IPA advised that there was a *'loss of continuity of care'* in the complainant's treatment, as he was *'treated by a number of clinicians… due to waiting list pressures.'* I note the OS IPA advised that if the complainant had been treated by fewer clinicians, and had better communication with the Trust, this may have increased his trust in the treatment being provided.

90. I consider a patient's continuity of and coordination of care to be of paramount importance, and I am concerned that the complainant did not have a positive experience. However, I appreciate that there are pressures on waiting lists within the Trust. I refer to the Second Principle of Good Administration, which states that public bodies should '*deal with people promptly'*, and *'communicate effectively.'* I consider that the Trust could have provided the complainant with a more unified care pathway, and ensured better communication.

91. I also accept the OS IPA's advice that it would be speculative to determine that treatment by fewer clinicians would have led to a different outcome for the complainant.

92. I refer to the Fifth Principle of Good Administration, *'putting things right'*, which states that public bodies should acknowledge mistakes and apologise where appropriate. I am pleased to note that the Trust *'agreed that [the complainant] had a difficult care pathway and apologised for his experiences.'*

93. Overall, I note the OS IPA advised that *'all the clinicians have done their best to assess the patient appropriately, conduct relevant investigations and surgeries have been performed well too.'* On review of the clinical records, I accept the OS IPA's advice that no *'mistreatment or inappropriate management'* of the complainant has been identified.

Issue 2: Whether the Trust provided the complainant with a reasonable opportunity to comment on the record of the meeting on 22 November 2017?

Detail of complaint

94. As part of his complaint, the complainant stated that he believes the Trust did not provide him with an adequate opportunity to comment on the record of the meeting which took place on 22 November 2017.

Evidence considered

95. I considered the Trust's Complaints Policy, which states:

> *'**3. Meeting a complainant***
> *If a meeting is arranged with a complainant at any point in the complaint management process the Investigating Officer in collaboration with the Complaints manager will ensure that…*
>
> - *a record is kept of the meeting (this may be in the form of written notes or a digital recording). The Service Area should provide a minute-taker at family meetings. A copy of the meeting notes should be sent to the Complaints Department for issue to the complainant (if requested) no later than 10 working days from the date of the meeting. A copy of the meeting notes should be sent to the Complaints Department for issue to the complainant (if requested) no later than 10 working days from the date of the meeting.'*

96. I also considered emails from the complainant to the Trust on 9 October and 1 November 2018, including the Trust's responses on 15 and 31 October 2018:

> *'9 October 2018*
> *Hi [Complaints Department],*
> *Thank you for the minutes from the 2nd meeting.*
> *Could you also provide minutes to the first meeting held in November of 2017…*
> *Many thanks*
> *[The Complainant]*

15 October 2018

Dear [The Complainant]

Thank you for your email and I am sorry for the delay in responding to you. I can confirm that I did take a brief summary of the actions to be taken following the meeting as a record for our complaint file.

I would like to let [the Service Manager] have a look at the summary to ensure it is correct before sending you a copy. [She] is on leave until 23 October 2018 and I will be able to send my summary to you following this date.

Kind Regards

[The Complaints Department]

31 October 2018

Dear [The Complainant]

Thank you for your patience while we have been getting approval from staff members for the summary of your meeting in November 2017.

I am pleased to say we got approval and I have attached the summary to this email.

If you have any questions, feel free to contact us.

Many thanks

[The Complaints Department].

1 November 2018

Dear [Complaints Department],

Thank you for your email containing the minutes form the meeting in November 2017…

[The Private Consultant] doesn't work for Musgrave [Park Hospital], or even any affiliation with NHS at all. That's why I got an honest examination and real MRI from him…'

Trust's response to investigation enquiries

97. At the meeting on 22 November 2017, the Trust stated that *'staff sought to seek resolution to [the complainant's] concerns and in agreement with [him] it was agreed… that rather than going through his past treatment and care it*

would be more beneficial to him to move forward with his current treatment and with the agreement of [the complainant], [the Service Manager] expedited an appointment with [the COS2] and also expedited his left shoulder arthroscopy.'

98. The Trust stated that *'the minutes taken at this meeting were for complaints records only and [the complainant] was advised of this at the time of the meeting as he had agreed with the follow up actions and [he] was also advised of this in an email dated 15 October 2018.'* Subsequently, the Trust stated that the complainant *'was provided with a copy of the minutes 'offering him the opportunity to make further comments, however he did not.'*

99. In addition, the Trust stated that on 1 November 2018, the complainant emailed the Trust in relation to the minutes of the meeting, advising that the private healthcare doctor named in the minutes did not work for the Trust, and *'amendments were made to the minutes to change [his] name to [the COS2's name].'* The Trust stated that it *'would like to apologise for this administrative error and provide reassurance that this error has now been amended.'*

100. The Trust stated that *'complaints staff have reflected on their actions with regards to informing patients that they have an opportunity to comment on any minutes to meetings or actions from meetings.'* It stated that at the meeting on 22 November 2017, *'staff agreed that had a difficult care pathway and apologised for his experiences.'*

Analysis and findings

101. On 22 November 2017, I note the complainant met with the Trust to discuss his complaint. I note the complainant believes that the Trust did not provide him with an adequate opportunity to respond to the minutes of the meeting.

102. In response, I note the Trust stated that it advised the complainant at the meeting that the minutes were for the Trust's record only. I refer to an email dated 15 October 2018, which advises the complainant that this is the case. Subsequently on 31 October 2018, I note the Trust provided the complainant

with a copy of the minutes, and advised him to contact it if he had any questions. I note the Trust stated that the complainant did not provide further comment. However, on 1 November 2018, I note the complainant emailed the Trust to advise them of an error within the meeting minutes, in relation to a consultant's name.

103. I refer to the Trust's Complaints Policy, which states *'if a meeting is arranged with a complainant at any point in the complaint management process the Investigating Officer in collaboration with the Complaints Manager will ensure… a record is kept of the meeting… a copy of the meeting notes should be sent to the Complaints Department to issue to the complainant (if requested).'* I note the complainant requested a copy of the meeting minutes from the Trust on 15 October 2018, and received them on 31 October 2018. I also note he was provided the opportunity to request changes to the meeting minutes.

104. Therefore, on consideration, I am of the opinion that the Trust provided the complainant with an adequate opportunity to respond to the minutes of the meeting. I am also pleased to note the Trust apologised for the error in the minutes and updated them accordingly.

CONCLUSION

105. The complaint concerns the care and treatment provided to the complainant by the Trust between December 2010 and July 2018. In addition, he complained that the Trust failed to provide him with an opportunity to respond to minutes of a meeting on 22 November 2017. I have investigated the complaint and consider that the care and treatment provided by the Trust between December 2010 and July 2018 was appropriate. In addition, I consider that the Trust provided the complainant an opportunity to provide comment on the records held in relation to the meeting in November 2017.

106. However, I have found maladministration as a result of the Trust's failure to provide the COS2 with the relevant information prior to the consultation on 14 November 2017. I am satisfied that this failure caused the complainant to experience the injustice of inconvenience.

Recommendations

107. I recommend that the Trust issues the complainant with an apology in accordance with the NIPSO guidance on apology. This is for the failings identified, and should be issued **within one month** of the date of my final report.

108. In relation to the OS IPA's observations regarding continuity of care and the importance of appropriate sharing of information when a patient is receiving care in both the Trust and private healthcare, I suggest that the Trust shares the learning identified with relevant staff.

109. I am pleased to note the Trust accepted my findings and recommendations.

PAUL MCFADDEN
Acting Ombudsman **May 2020**

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.