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

Report reference: 202004459

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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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Listed Authority: Belfast Health and Social Care Trust

SUMMARY

This complaint was about the care and treatment the Belfast Health and Social Care Trust (the Trust) provided to the complainant during the period of 7 February to 21 September 2022. The complaint was also about how the Trust managed the complaint.

The complainant believed the Trust misdiagnosed her Temporomandibular Joint Dysfunction[1] (TMD) as muscular, rather than Disc Displacement without Reduction[2] (DDWoR). The complainant believed the Trust consequently did not provide appropriate treatment, and which delay impacted on the potential for a full recovery. The complainant also believed the Trust performed a test which may have negatively affected the DDWoR. Further, the complainant also believed the Trust did not consider a sleep-related cause for her bruxism[3] and failed to check whether a bite guard, prescribed by another provider, was appropriate. The complainant also believed the Trust did not address all the concerns raised in her complaint.

The investigation identified the Trust failed to: -

- carry out appropriate radiological investigations in diagnosing the complainant's condition;
- clearly communicate the diagnosis to the complainant in accordance with relevant standards; and
- check the appropriateness of a bite guard, which another provider prescribed for the complainant, before telling the complainant to continue with its use.

[1] Temporomandibular Joint Dysfunction (TMD) relates to a group of musculoskeletal conditions that affect the chewing muscles, the jaw joint and associated structures. TMD can be either muscular in origin, joint or joint structure in origin, or in some individuals the muscles and joint may both be affected. Main symptoms include pain in and around the jaw joint and chewing muscles, worsened with jaw use; joint noises (click, pop, snap); difficulty using jaw normally; for example, reduced opening of the jaw.

[2] Disc Displacement without Reduction (DDWoR) is a specific form of TMD that can cause pain and limited mouth opening (painful locking), sometimes called a "closed lock".

[3] Bruxism is when you clench, grind or gnash your teeth. It usually happens subconsciously, either during waking hours or when you're asleep. Causes include stress, anxiety, sleep disorders and certain medications. Most people who grind their teeth can ease symptoms with a custom bite guard.

The Trust also performed an inappropriate pressure test on the complainant's jaw and did not adequately investigate and address all issues the complainant raised through the complaints process.

I recommended the Trust provides the complainant with a written apology for the injustices caused by the failures. I made further recommendations for the Trust to address under an evidence-supported action plan.

THE COMPLAINT

1. This complaint was about the Belfast Health and Social Care Trust's care and treatment provided to the complainant from 7 February to 21 September 2022. It was also about how the Trust managed the complaint.

Issues of complaint

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

Issue 1: Whether the care and treatment the Trust's School of Dentistry provided to the complainant during the period 7 February to 21 September 2022 was reasonable, appropriate and in line with relevant standards.

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

INVESTIGATION METHODOLOGY

3. 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 [delete if not relevant]

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

- A Consultant Oral and Maxillofacial Surgeon, BChD, MBChB, FDS RCS, FFST FRCS, FRCS (OMFS), with 21 years' experience as a consultant.

I enclose the clinical advice received at Appendix four to this report.

5. 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

6. 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[4]:

   - 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 and professional judgement of those individuals whose actions are the subject of this complaint.

   The specific standards and guidance relevant to this complaint are:

   - The National Institute for Health and Care Excellence Temporomandibular Disorders (TMDs), 2021 (NICE TMD Guidance);
   - The General Dental Council Standards for the Dental Team, June 2014 (GDC Standards);
   - The Department of Health Guidance to the Health and Social Care Complaints Procedure, October 2022 (DoH Complaints Procedure); and
   - The Belfast Health and Social Care Trust Complaints Policy, 2020 (Trust Complaints Policy).

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

9. A draft copy of this report was shared with the complainant and the Trust for comment on factual accuracy and the reasonableness of the findings and recommendations.

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

THE INVESTIGATION

Issue 1: Whether the care and treatment the Trust's School of Dentistry provided to the complainant during the period 7 February to 21 September 2022 was reasonable, appropriate and in line with relevant standards.

Detail of Complaint

10. The complainant suffers from Temporomandibular Joint Dysfunction (TMD). The complainant said her dentist referred her to the Trust School of Dentistry (SoD) which she attended from February to September 2022. The complainant said the SoD did not accurately diagnose her condition of Disc Displacement without Reduction (DDWoR), which a TMD specialist in London subsequently diagnosed in December 2022. The complainant said the SoD diagnosed muscular TMD; however, DDWoR concerns the mechanical operation of the jaw and involves bones and cartilage.

11. The complainant said the SoD should have recognised her symptoms of *'limited mouth opening,'* '*condylar flattening*[5]*'* and an '*open bite*[6]' as being indicative of DDWoR. She said, because of the incorrect diagnosis, the SoD's treatment plan was not appropriate; therefore, the delay in correct treatment affected the potential for a full recovery. The complainant also said she believed that the Trust did not provide sufficient training to SoD staff to enable them to identify DDWoR. The complainant also said the SoD performed a mouth opening test on her, which she believed might have had a negative impact of the DDWoR.

12. The complainant also said the SoD did not discuss the possibility that her nighttime bruxism could be a sleep-related issue, such as sleep apnoea[7].

13. The complainant said the SoD told her to continue to use a bite guard, prescribed by a private dentist, without checking its suitability. She said that, subsequently, she discovered that the bite guard was not suitable.

[5] Condylar flattening or resorption is a rare condition that causes bones in your jaw joint to break down. People with this condition may notice their lower jaw looks like it's shrinking or retracting. Condylar resorption can also cause temporomandibular joint disorders (TMD).

[6] Open bite is when teeth are not aligned correctly when the jaws are closed.

[7] Sleep apnoea is when your breathing stops and starts while you sleep.

Evidence Considered

Legislation/Policies/Guidance

14. I considered the following guidance:
    - The NICE TMD Guidance; and
    - The GDC Standards.

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

Trust's response to investigation enquiries

15. As part of investigation enquiries, the Trust had an opportunity to respond to the complaint. The Trust's response to the enquiries is at Appendix three to this report.

Relevant Trust records

16. I considered the complainant's relevant clinical records for the period of 7 February to 21 September 2022.

Relevant Independent Professional Advice

17. The Consultant Oral and Maxillofacial Surgeon IPA (IPAI') provided advice about the investigations the SoD carried out with the complainant, its diagnosis and treatment; the information the SoD gave the complainant about the diagnosis; the SoD's competence to diagnose TMD; and the SoD's actions and advice related to the complainant's bruxism and bite guard. The IPA's full advice is at Appendix four to this report.

Responses to the Draft Investigation Report

18. The complainant and the Trust were given an opportunity to provide comments on the Draft Investigation Report. The responses to the Draft Report have been

considered and, where appropriate, comments have been reflected in the report or changes have been made.

The Complainant's response

19. The complainant referenced the report findings and conclusion. She said the Trust's failures led to *'further suffering, pain [and] loss of earnings'*. Further, she had to seek further advice and treatment which cost her '*a fortune'*.

The Trust's response

20. The Trust referenced guidance from 2013. Specifically, the Royal College of Surgeons, Faculty of Dental Surgery's TMDs – An Update and Management Guidance for Primary Care. The Trust stated that it considered the IPA's advice did not reflect this. Specifically, the Trust stated: -

- those patients with DDWoR will have a history of closed lock; however, the complainant did not report jaw locking whilst under the Trust's care;
- although, where a Magnetic Resonance Image (MRI)[8] indicates a displaced disk, this may explain a closed lock, it is not sufficient to diagnose DDWoR without jaw locking;
- it disputed the IPA's advice about the need for an Orthopantomogram (OPT scan[9]). Most *'TMJ diagnoses can be made by clinical findings alone and imaging is generally only considered for functional issues'*. Therefore, as the complainant reported improvements, there was no need for other images;
- the application of pressure to the jaw is not inappropriate; rather in the guidance there is reference to assisted opening as part of diagnosis; and
- it did make a clear diagnosis of TMD at the complainant's first appointment.

21. The Trust also stated it would consider the IPA's advice about how clinical letters are structured. Further, it agreed with the IPA that the application of pressure to the jaw is not primarily used to identify a tumour as it had stated in the letter to the

[8] MRI (Magnetic resonance imaging) is a medical imaging technique used in radiology to take pictures inside the body. MRI scanners use strong magnetic fields, magnetic field gradients, and radio waves to generate images of the organs in the body.

[9] An OPT scan (Orthopantomogram) gives an incredibly clear image of the oral cavity and surrounding bones compared to conventional x-rays. They are used primarily to pinpoint and evaluate specific oral health problems that need to be addressed. They can be an essential tool in creating an effective treatment plan. Examples of what the OPT scan is primarily used to diagnose and evaluate include diseases of the facial bone and Temporomandibular Joint assessment.

complainant of 10 March 2023. The Trust also conceded that there were *'misunderstandings*' about the biteguard.

22. The Trust queried whether an oral surgeon IPA would be more appropriate than an oral and maxillofacial surgeon.

Further Investigation Enquiries Following Draft Investigation Report Responses

23. Following the Trust's comments on the Draft Investigation Report, the IPA provided further advice about provision of peer advice; diagnosis of DDWoR in the context of jaw locking; use of imaging in the diagnosis of DDWoR; the Trust's diagnosis; application of pressure on the complainant's jaw; and the impact of any delay in diagnosis. The further IPA advice is at Appendix five to this report.

Analysis and Findings

Diagnosis, investigations and treatment

24. I note the RMC TMD Guidance states, '*special investigations will involve the targeted use of radiographs to identify dental or other pathology*[10]*.'*

25. I note the NICE TMD Guidance states, *'arrange referral to oral and maxillofacial surgery; … for specialist investigations and management, depending on clinical judgement, if a person has: …Persistent symptoms despite 6-8 weeks of primary care treatment … Severe pain and dysfunction from internal derangement that does not respond to conservative measures … An uncertain diagnosis.'* Further, this guidance also states, *'special investigations include … Computerized tomography (CT) scan to assess for degenerative joint disease or subluxation of the TMJ. Magnetic resonance imaging (MRI) to assess for TMJ disc displacement, subluxation, arthrosis …..'*

26. The IPA provided advice about TMD and detailed the complainant's presenting symptoms at each consultation at the SoD. The IPA also provided advice about the investigations the SoD carried out with the complainant. The IPA advised that the initial management and diagnosis of DDWoR is '*within the [General Dental Council's] syllabus for Oral Surgery training*' and a '*competent Oral Surgeon should be able to*

[10] Pathology is the study and diagnosis of disease.

make the diagnosis and refer onward as appropriate'. I note he confirmed he *'considered the advice in the context of the care and treatment that can and should be provided by an Oral Surgeon'.*

27. The IPA advised, during the period of 7 February to 28 July 2022, *'in the context of the patient's presenting symptoms-no positive findings, except scalloping of tongue and cheek biting with no clicking or deviation'* both '*the Trust's working diagnosis of muscular TMJ disfunction (myofascial)'* and its *'approach to management and treatment of this (conservative management)'* were reasonable. I note the IPA's advice, after this period of four to six months, because the complainant *'continued to have issues, further investigations (for possible internal derangement) via an MRI should have been undertaken.'*

28. The IPA advised the following. The '*open and closed jaw radiographs'* which the SoD conducted were *'of limited practical or clinical use*.' '*Open and closed condylar views are not routinely used in clinical practice-an OPT is the normal first line investigation. If attempting to determine if there is degenerative disease a CT is used; if investigating for internal derangement (DDWR[11] or DDWoR) an MRI is needed.'* I note the IPA's advice that, '*certainly by August 2022 an MRI should have been carried out.'*

29. The IPA also advised the following. *'The diagnosis and management of TMJ including DDWoR is within the scope of oral surgery training. Therefore this would have been within the [SoD] consultant's remit'.* Further, '*surgical'* management and treatment of this can be within the scope of an oral surgeon's area of expertise, although *'is probably'* outside the scope of most. I note his advice that, if the SoD had carried out an MRI in July or August 2022, resulting in *'the appropriate diagnosis'* but the SoD was unable to carry out the required surgical management, the SoD could then have referred the complainant to an appropriate department.

30. The IPA further advised the following. Jaw locking describes a *'failure of the jaw to open and this may well be 20-25mm or less*'. The complainant was measured with both reduced active and passive jaw opening. While the complainant's limited range

[11] DDWR (Temporomandibular joint disc displacement with reduction) is when the disc is displaced in a closed-mouth position but reduced back to a regular place, in an open position. This reduction causes a click sound.

was between 30 and 35 mm, *'the jaw can be actively extended with pain, as [with] this patient's history'.* Further, it is recognised that, over time, jaw opening can increase, despite the disc being displaced. In his *'opinion … that is what occurred in this case'.* He advised that the Trust *'missed the subtle point that the acute locking may have occurred earlier and the disc is still displaced, but the opening has improved, albeit to a limit. No jaw locking and clicking are both part of DDWoR'.* I note the IPA referenced *'Westesson's landmark study'* and advised that *'30% of asymptomatic patients can have a displaced disc … when a patient has a limitation of opening (30mm) good clinical practice would direct towards an MRI and confirmation of that displaced disc'.*

31. I note the IPA's further advice, it was not reasonable that the Trust did not diagnose the complainant with DDWoR. He advised the Trust did not *'extrapolate the clinical signs and history and consider an alternative diagnosis, which was then confirmed on MRI scanning'.* Further*, 'the Trust missed opportunities to fully investigate the presenting signs and symptoms, relied on outdated and inappropriate investigation and persisted in letting this patient be seen by very junior trainees'.*

32. I note the IPA's further advice about the use of imaging. Although muscular TMJ problems do not always require imaging, '*modern good practice*' would be to request an OPT or [Cone Beam Computed Tomography (CBCT])[12]' in circumstances where *'joint pathology was being considered/excluded'.* The IPA reiterated his advice that '*in this case … outdated imaging was requested and reliance made on that report, without due consideration to the clinical findings, ie limited mouth opening, the patient had no stigmata of degenerative joint disease on clinical examination, (pain, point tenderness, crepitus, deviation to affected side)'.* He also referenced the private orthodontist's letter with the DDWoR diagnosis, which notes that an OPT was taken. The IPA advised '*this supports that if an OPT was taken earlier along with the symptoms it might have pointed the clinical team in a different direction'*.

33. The IPA further advised the Trust did not provide timely and appropriate intervention and treatment. I note his advice the Trust failed to *'recognise and diagnose a fairly straightforward clinical presentation, despite multiple other avenues having been*

[12] Dental cone beam computed tomography (CT) is a special type of x-ray equipment used when regular dental or facial x-rays are not sufficient. This technology can be used to produce three dimensional (3-D) images of teeth, soft tissues, nerve pathways and bone in a single scan.

explored, of a primary disc / condyle abnormality. In the presence of limited opening and pain, with failure to respond to conservative measures, not considering further imaging or the diagnosis of DDWoR was sub-standard practice for a competent and trained Oral Surgeon. The Trust missed a potentially treatable condition'. An MRI *'is the definitive investigation when considering disc related pathophysiology'* and the SoD's *'focus on muscular causes and addressing of parafunctional habits (bruxism) coupled with an unhelpful plain x-ray and report meant that disc pathology was never fully considered'.* He concluded '*there is evidence that early treatment [of DDWoR] can lead to better outcomes and limit the damage to the disc and the bony articulations[13].'* Further, although *'not definitive, if this diagnosis had been made earlier, a simple surgical intervention … may have restored a more normal disc condyle relationship and improved symptoms'.*

34. The IPA confirmed the complainant did have an *'open bite'.* However, he advised that, although '*an acute closed lock – extreme form of DDWoR will produce an open bite',* in the complainant's case, the '*open bite'* was not due to DDWoR, but rather was because the bite guard did not have '*full dental arch coverage'.*

35. I am satisfied the RMC TMD Guidance indicates special investigations for diagnosis of TMD require targeted radiology scans. Further, I note the NICE TMD Guidance specifies, when conservative management is not effective or there is an uncertain diagnosis, special investigations are required, and which include CT scans and MRI. I refer to paragraphs 37 to 42 below and the complainant's clinical records. I accept the IPA's advice that, although the SoD's initial investigations and management approach were reasonable until July/August 2022, after this point the SoD should have undertaken further investigations. I also accept the IPA's advice the x-rays the SoD performed were not appropriate. I am satisfied the Trust failed to provide appropriate care and treatment to the complainant; therefore, I uphold this element of the complaint.

Injustice

36. I considered carefully whether the Trust's failing caused injustice to the complainant. I refer to the complainant's comments that the Trust's failures led to '*further suffering, pain [and] loss of earnings'* and she incurred costs because she had to seek further

[13] Articulations is where two bones come together (joints).

advice and treatment. I also refer to the IPA's advice that, if the Trust had carried out further appropriate investigations, resulting in an earlier diagnosis and appropriate treatment, this '*may have … lead to better outcomes,' 'limit[ed] the damage* and *'improved symptoms'.* Therefore, it is my clear view that the complainant sustained the injustice of a loss of opportunity for optimum treatment for her DDWoR and better chance of fuller recovery. I also consider the complainant sustained the injustice of unnecessary pain arising from delays in appropriate diagnosis and treatment and additional expense. Further, she sustained the injustice of worry and uncertainty about her condition.

Communication of diagnosis to the complainant

37. I note the GDC Standards state, *'you must communicate effectively with patients' and 'give patients the information they need, in a way they can understand, so that they can make informed decisions'.*

38. I note the records of the complainant's appointment at the SoD on 28 July 2022 state, *'d/wpt findings of radiology report'* and on 31 August 2022*, 'pt informed of blood results'.* The letter, sent to the complainant's dentist following the consultation at the SoD on 28 July 2022, states, *'we discussed the findings of the radiology report which are mostly in keeping with joint disease from a parafunctional habit[14]. There was a small possibility of inflammatory disease but this would not be in keeping with [the complainant's] relapsing and remitting pattern of pain … On examination today … Intra-orally there was buccal linear keratosis and bilateral tongue scalloping again supporting the diagnosis of temporomandibular joint dysfunction.'* The SoD also provided copies of this letter to the complainant and her GP.

39. The IPA advised that '*a number of different dental staff including a consultant'* saw the complainant. I note the IPA's advice he could not '*find evidence'* the SoD *'clearly explained'* the diagnosis to the complainant. Further, *'the clinical letter should detail the diagnosis and treatment ie Diagnosis, Management, Follow up. That is not evident here'.* In his further advice, the IPA referenced the private orthodontist's letter to the complainant. He advised that *'this letter very carefully describes the problems and offers some solutions …This letter demonstrates a clear diagnosis'.*

[14] Parafunctional habit is repetitive behaviour that targets the oral structures, including tongue thrusting and bruxism.

40. I consider the records indicate the SoD discussed findings from the x-ray and blood tests with the complainant. I also consider, however, although the clinical letter indicates the SoD suggested a likely diagnosis of *'temporomandibular joint dysfunction*', the SoD did not record a definitive diagnosis and did not document any discussion about a diagnosis with the complainant, either within this letter or within any other clinical records. I accept the IPA's advice he could not find evidence the SoD *'clearly explained'* the diagnosis to the complainant and the clinical letter did not appropriately detail the diagnosis and treatment. I refer to the Trust's comment at paragraph 21 that it would consider the IPA's advice about the structure of clinical letters.

41. I consider the SoD's failure to clearly communicate the diagnosis to the complainant does not accord with the GDC standards. Therefore, I consider this constitutes a failure in care and treatment and uphold this element of the complaint.

Injustice

42. I considered carefully whether the Trust's failing caused injustice to the complainant. I consider the complainant sustained the injustice of worry and uncertainty about her condition.

Application of pressure to complainant's jaw

43. The IPA advised that the SoD's test of applying pressure to her lower jaw is associated with the risk of '*increased pain, potential for joint change; specifically, it has the potential to further damage the displaced disc. These are potential risks and are therefore not definitive impacts.'* I note the IPA's advice, because of these risks, this '*is not recommended'.* I refer to the Trust's comments at paragraph 20 that assisted opening is part of the diagnostic criteria within the Royal College of Surgeons, Faculty of Dental Surgery's TMDs – An Update and Management Guidance for Primary Care, 2013. The IPA reiterated that this guidance is not appropriate as it relates to primary care. He further advised that '*active pressure adds very little and is painful*'.

44. The IPA referenced the Trust's comments that performing this action helps to delineate a tumour. I note with concern that the IPA advised this suggestion *'is misleading and unsound'.* I also refer to the Trust's comments at paragraph 21 that it

acknowledged that the application of pressure to the jaw is not primarily used to identify a tumour as it had previously stated in the letter to the complainant of 10 March 2023.

45. I accept the IPA's advice and am satisfied this was not an appropriate test to carry out. I consider this constitutes a failure in care and treatment; therefore, I uphold this element of the complaint.

Injustice

46. I considered carefully whether the Trust's failing caused injustice to the complainant. I refer to the IPA's advice the application of pressure *'is painful'* and has the potential to negatively impact the condition; however, this is a potential not definitive risk. Therefore, I consider the complainant sustained the injustice of worry and uncertainty about the impact of this on her condition.

Bruxism

47. The IPA advised that the SoD considered bruxism because of the complainant's bite guard. I note his advice bruxism *'can be a co-factor in TMD there are differing views as to its direct causal link*'; however, because *'there was no evidence of significant non carious tooth wear noted'* in the complainant, which would be present with bruxism, the *'soft factors- linea alba and scalloped tongue'* evident *'are likely to be of no or limited significance'.*

48. I accept the IPA's advice and am satisfied the Trust's care and treatment of the complainant in relation to bruxism were appropriate. Therefore, I do not uphold this element of the complaint.

The complainant's bite guard

49. I note the RMC TMD Guidance which states, *'partial coverage … splint[15]… is more commonly used in the maxilla[16] and has undergone some limited research in TMDs and nocturnal bruxism … but it has not shown superiority over a full-coverage stabilisation splint for reduction of myofascial pain and a partial coverage device is*

[15] Splint is another word for bite guard

[16] Maxilla is the upper jaw.

more likely to allow for occlusal[17] changes unless patients comply carefully with treatment protocols, and are subject to careful regular follow-up with potential difficulties, with a high risk of exacerbating the patient's problems'.

50. I note the GDC Standards states, *'you must take a holistic and preventative approach to patient care which is appropriate to the individual patient … you must provide patients with treatment that is in their best interests, providing appropriate oral health advice'.*

51. I refer to the complainant's clinical records of 7 February to 21 September 2022. I note the record of the complainant's first appointment with the SoD on 7 February 2022 states*, 'keep wearing b/g[18]'.*

52. The IPA advised, because the Trust neither prescribed nor made the bite guard, it had no responsibility for its appropriateness. However, I note the IPA's advice, the records evidence the SoD '*told the patient to continue using the splint'* and because the SoD provided this advice, '*this places a responsibility on them to check this, before providing this advice'*. The IPA advised the bite guard '*did not have full dental arch coverage'* and which can lead to development of an open bite. The IPA advised the complainant's open bite was because the bite guard did not have full dental arch coverage, but the open bite may have formed prior to the Trust's involvement, thereby the impact of the Trust's action could not be determined.

53. I consider the complainant's clinical records evidence the SoD told the complainant to continue using her bite guard. I consider the RMC TMD Guidance indicates a partial coverage bite guard is not recommended and carries a high risk of having a negative impact on a patient. Further, I accept the IPA's advice the bite guard should have full coverage and the complainant's bite guard did not. I also accept the IPA's advice the SoD had no responsibility for the provision of the bite guard; however, because the SoD informed the complainant to continue with the bite guard, in providing this advice, the SoD had a responsibility to ensure this was appropriate. I

[17] Occlusal refers to the alignment of teeth and how the upper and lower teeth come together.

[18] B/g is a bite guard.

refer to the Trust's comments at paragraph 21 and the Trust's acknowledgement that there were '*misunderstandings'* about the biteguard.

54. I consider the GDC Standards indicate the SoD had a responsibility to provide *'appropriate oral health advice'* and which is applicable to the SoD's role in providing advice to the complainant about use of the bite guard. Therefore, I am satisfied the SoD's failure to check the bite guard's suitability before telling the complainant to continue its use does not accord with the GDC Standards; therefore, this is a failure in care and treatment. Therefore, I uphold this element of the complaint.

Injustice

55. I considered carefully whether the Trust's failing caused injustice to the complainant. I refer to the IPA's advice the complainant did have an open bite, and this was because the bite guard did not have full dental arch coverage. I also refer to his advice, however, that the full impact of the Trust's advice to the complainant about the bite guard's continued use could not be determined. Therefore, I consider the complainant sustained the injustice of the loss of opportunity of preventing further development of the open bite.

56. I refer to my findings at paragraphs 35, 40 to 41, 45, 48 and 53 to 54 and partially uphold the first issue of complaint.

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

Detail of Complaint

57. The complainant said the Trust failed to fully respond to all the issues she raised in her complaint; specifically issues raised in her second letter to the Trust, dated 27 March 2023. These included the failure to diagnose DDWoR; the '*lack of treatment plan;'* the SoD's lack of knowledge of TMD and lack of *'proper advice'*; and the deterioration in her DDWoR.

Evidence Considered

Legislation/Policies/Guidance

58. I considered the following policies and guidance:

- The Principles of Good Administration;
- The Principles of Good Complaints Handling;
- The DoH Complaints Procedure; and
- The Trust Complaints Policy.

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

Trust's response to investigation enquiries

59. As part of investigation enquiries, the Trust had an opportunity to respond to the complaint. The Trust's response to the enquiries is at Appendix three to this report.

Relevant Trust records

60. I considered the correspondence related to the complaint to the Trust from the period between 13 December 2022 and 5 July 2023.

Analysis and Findings

61. The Trust Complaints Policy states, '*[complaint responses] should aim to answer all the issues raised by the complainant, in an open and honest way, explaining the situation, why it occurred and the action taken or proposed action'* and responses '*should: address all the issues raised in a proportionate and fair manner'.* I note the DoH Complaints Procedure, which applies to health and social care Trusts, states, complaint responses should '*address the concerns expressed by the complainant and show that each element has been fully and fairly investigated'.*

62. I note in the Trust's response to the complainant of 10 March 2023, the Trust provided a response to each of the issues the complainant raised in her first letter, dated 13 December 2024.

63. On 5 July 2023, the Trust responded to the complainant's further letter of complaint of 27 March 2023. I note, in this response, the Trust did not address all the issues the complainant detailed in her second correspondence. In the Trust's response to investigation enquiries, the Trust stated*, 'it would have been inappropriate for [the*

Trust] to comment on the findings/advice/treatment provided by another Dentist, particularly' because there were no written reports provided. The Trust also referenced the responses the SoD had previously given to the complainant, and which the Trust stated would be *'unhelpful'* to repeat as the complainant did not accept these previously.

64. I consider it was reasonable that, in its second response, the Trust did not repeat information it had previously provided to the complainant, and which addressed issues previously raised. However, I note, in her second letter, the complainant specifically challenged the accuracy of several points in the Trust's first response to her. Specifically, the SoD did not discuss anything concerning her joint or its mechanics with her, as the Trust asserted; and, although the bite guard did not originate with the SoD, the SoD had provided advice to her about this. The complainant's comments about the SoD's actions in relation to the bite guard, which she included in her second letter, conflicts with the Trust's comments about this issue contained within the Trust's first response.

65. I consider the complainant's clinical records evidence the SoD did advise the complainant to continue use of the bite guard. I also consider the records do not clearly evidence the SoD discussed the complainant's joint with her. However, although the complainant provided further specific comments about these issues in her second letter which refute the Trust's original response, there is no evidence the Trust investigated or consequently addressed these issues which the complainant included in her second letter. I refer to my findings at paragraphs 39 and 52 related to issue one. Specifically, the SoD did not clearly communicate the diagnosis to the complainant and did not check the suitability of the bite guard before providing advice on its use. I consider the Trust's failure to adequately investigate and respond to these two issues in its second response does not accord with either the Trust Complaints Policy or the DoH Complaints Procedure. Therefore, I consider this maladministration as it does not align with the Principles of Good Complaints Handling. Specifically, Principles one and four, '*Getting it right'* and '*Acting fairly and proportionately'*; the former of which requires public bodies to act in accordance with relevant guidance, and the latter requires public bodies to thoroughly and fairly investigate complaints to establish the facts of the case. Therefore, I uphold this issue of complaint.

Injustice

66. I considered carefully whether the maladministration caused injustice to the complainant. I consider the complainant sustained the injustice of frustration and additional time and trouble in pursuing the complaint with this office.

CONCLUSION

67. I received a complaint about the care and treatment the Trust provided to the complainant in relation to TMD. I partially upheld issue one and upheld issue two of the complaint for the reasons outlined in this report.

68. Specifically, in relation to issue one, the Trust did not carry out appropriate radiological investigations to diagnose the complainant; the Trust failed to clearly communicate the diagnosis to the complainant in line with the GDC Standards; the Trust informed the complainant she could continue to use a bite guard from another provider without checking the bite guard's suitability; and the Trust carried out a pressure test on the complainant's jaw, a test which is not recommended. I consider these constitute failures in the Trust's care and treatment of the complainant.

69. In relation to issue two, the Trust did not adequately investigate, and address issues raised in the complainant's second letter about the complaint. I consider this maladministration.

70. I recognise the failures caused the complainant to sustain the injustice of a loss of opportunity for optimum treatment of her DDWoR, a better chance of fuller recovery and a loss of opportunity of preventing further development of the open bite. I also recognise the complainant sustained the injustice of worry and uncertainty about her condition; unnecessary pain and additional expense. I recognise the complainant sustained the injustice of frustration and additional time and trouble in pursuing her complaint.

Recommendations

71. I recommend the Trust provides a written apology to the complainant in accordance with NIPSO's 'Guidance on issuing an apology' (July 2019), for the injustices caused because of the failures identified (within **one month** of the date of this report).

72. I further recommend the Trust should remind relevant staff of the importance of the NICE TMD Guidance, particularly in relation to appropriate radiological investigations for assessment of TMD. I also recommend the Trust should remind relevant staff of the importance of the GDC Standards, Principles one and two.

73. I recommend the Trust should give relevant staff the opportunity to reflect on the findings of this report and the full IPA's advice, in consideration of their own practice and which the Trust should note in appraisal documentation. The Trust should evidence this through records of information sharing.

74. I recommend the Trust should also remind relevant staff of the importance of the Trust Complaints Policy and the DoH Complaints Procedure, with particular reference to the importance of adequately investigating and responding to all concerns raised in complaints.

75. I recommend that the Trust implements an action plan to incorporate the recommendations in paragraph 72 to 74 and should provide me with an update within **three months** of the date of this final report. The action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

MARGARET KELLY **July 2025**
Ombudsman

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.