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The investigation of a complaint against Swansea Bay University Health Board

A report by the
Public Services Ombudsman for Wales
Case: 202200425

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Introduction

This report is issued under s23 of the Public Services Ombudsman (Wales) Act 2019 (“the Act”).

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mrs C.

Summary

Mrs C complained on behalf of her husband Mr C, that he had waited a long time for orthopaedic surgery and that their understanding of how he would be treated was not managed well regarding the pre-operative assessments.

The waiting time for orthopaedic surgery at the Health Board is more than 4 years. The Health Board had issues including not enough staff, not enough suitable places to operate, unclear management arrangements, and unclear processes for these operations.

The Ombudsman identified that in this and 2 other cases, in addition to the long delays experienced by all patients awaiting orthopaedic surgery, the complainants had been treated unfairly because of errors in the way the waiting lists were managed. These issues raised the Ombudsman's concerns about how the waiting list has been managed.

Mr C, who had been assessed as needing surgery within a month, waited 43 months (3 years 7 months) for surgery in severe pain. During that time his position on the waiting list was reset in error and he was also removed from the list in error.

Mr C was also put through the stress and pain of pre-operative assessments when the Health Board would have been aware that it was unable to provide surgery before the pre-operative assessment expired, but it failed to take this into account or tell Mr C.

The Ombudsman noted that the Health Board has taken action to address the length of its waiting lists so made no recommendations about that. However, because of the issues identified she has asked the Health Board to review the decisions it made in respect of Mr C. The Health Board was also asked to audit the whole of its waiting list to establish whether errors had been made on the waiting list times or improper removal from the list for other patients and if so, it should apologise to those patients and correct the errors.

The Complaint

1. Mrs C complained about her husband, Mr C's, orthopaedic care (treatment relating to bones, joints, muscles and ligaments) by Swansea Bay University Health Board ("the Health Board"), and in particular that:

a) Mr C has had to wait an unacceptably long time for orthopaedic surgery when taking account of his clinical need and the impact his condition is having on his daily life.

b) Mr C's expectations were mis-managed by the NHS regarding the pre-operative assessment ("POA" - assessment of general health and fitness before surgery) he attended on 13 April 2021.

c) Mr C has not been reviewed by an orthopaedic surgeon since January 2020 and should have been re-examined so any deterioration in his condition could have been taken into account in determining his priority for surgery.

Investigation

2. My Investigation Officer obtained comments and copies of relevant documents from the Health Board and considered those in conjunction with the evidence provided by Mrs C.

3. In relation to events which occurred at the height of the COVID-19 pandemic, I carefully considered whether the care delivered was appropriate within this context. I have taken account of the severe pressure on public bodies at the time and the impact on the organisation's ability to balance the demands on its resources, and capacity to provide treatment, when reaching a decision about whether the care and treatment was appropriate. In doing so, I have considered the explanations of the organisation complained about and whether its approach to care and treatment was appropriate at the time.

4. Both Mrs C and the Health Board were given the opportunity to see and comment on a draft of this report before the final version was issued. The Welsh Government was also invited to comment on the facts that related to its involvement.

Relevant legislation, guidance and policies

5. The National Health Service (Wales) Act 2006 includes at section 3(1)(c):

> "The Welsh Ministers must provide throughout Wales, to such extent as they consider necessary to meet all reasonable requirements - …medical, dental, ophthalmic, nursing and ambulance services."

The Welsh Government arranges for these services to be delivered by the Health Board in its local area.

6. Rules for managing referral to treatment waiting times ("the RTT guidance") - Version 7 - October 2017:

- In March 2005 the First Minister and Minister for Health and Social Services announced that, by December 2009, no patient in Wales will wait more than 26 weeks from GP referral to treatment, including waiting times for any diagnostic tests or therapies required… The achievement of the 26-week RTT target is the responsibility of health boards.

- A maximum of a 36-week wait would be allowed for clinically complex patients, and different targets apply to certain types of treatment, such as diagnostic tests (e.g. X-rays) and treatment for cancer. The wait time begins on receipt of a referral by a healthcare professional to a consultant and is the start of the waiting time "clock". The clock can start or stop at certain designated points explained within the RTT guidance.

- This guidance is to ensure that the period patients wait for elective (planned) care are measured and reported in a consistent and fair manner.

7. The Clinical Guide to Surgical Prioritisation During the Coronavirus Pandemic, produced by the Federation of Surgical Speciality Association at the start of the COVID-19 pandemic ("the FSSA Guide"). The FSSA Guide sets out that categories 1a, to be performed in less than 24 hours, and 1b, to be performed in less than 72 hours, comprise emergency procedures such as fractures, infections, and dislocated joints. Regarding elective patients, the guide also states that category 2 patients should be treated within a month and category 3 patients should be treated within 3 months.

8. The British Orthopaedic Association ("BOA") Elective Standard - "Providing a Continuous Safe Elective Orthopaedic Environment" - February 2021 ("the BOA Standard"). The relevant sections of the Standard are:

- All surgical providers should have a defined facility that exclusively accepts appropriate orthopaedic patients. This should be distinct from other clinical areas either within an acute site or at a separate geographic location.

- If the ring-fenced capability is breached, all planned cases must be cancelled until the integrity of the facility is re-established, whilst supporting the safe management of patients.

9. The Welsh Orthopaedic Board National Clinical Strategy for Orthopaedics - "The National Blueprint for Orthopaedic Surgical Delivery in Wales" ("the National Blueprint report") 2022. This report described elective orthopaedic and trauma services in Wales as being in a "state of near collapse" and set out a long-term strategy for orthopaedic surgery. It produced a series of recommendations and actions that included:

- An acknowledgement of the challenge of ring-fencing beds specifically for orthopaedic surgery at Morriston Hospital.

- The development of 3 orthopaedic hubs throughout Wales, with 1 situated in South West Wales on a site that encompasses all of the interdependent services such as anaesthetists and an Intensive Therapy Unit ("ITU"). The report specifically mentioned that Neath Port Talbot Hospital would have an important role, and that its development should continue, but acknowledged the difficulty of providing services to patients with complex needs due to the lack of enhanced recovery facilities.

- Musculoskeletal pathways (for treatment of muscles, bones, joints and connective tissues) should be transformed.

- The development of a day case delivery network by individual health boards.

10. The Getting It Right First Time Project Team report, Orthopaedic National Report Across Wales" ("the GiRFT" report) - May 2022. This report aimed to enable the urgent restoration of elective orthopaedic treatment and the adoption of GiRFT principles to ensure best outcomes for patients. The report explained that:

- The GiRFT team identified significant variation between health boards in the way patients are treated and therefore in their outcomes. They stated that plans to re-start elective surgery and to reduce significant waiting lists were not widely known and seemed to be lacking pace. They found that patients on long waiting lists were de-conditioning (declining as a result of physical inactivity) and their conditions worsening; they said this was becoming a duty of candour (health care professionals should be open and transparent with patients) issue.

- The report made a series of 28 recommendations to tackle waiting lists, improve structures and ways of working and enhance quality of care to improve performance, awareness, and governance of orthopaedic surgery delivery across Wales at pace.

11. Audit Wales - Orthopaedic Services in Wales - “Tackling the Waiting List Backlog” (“the Audit Wales report”) - Report of the Auditor General for Wales, March 2023. This report placed the waiting list for orthopaedic services into context, considered what had affected service recovery, looked at what action was being taken and made recommendations for action.

The report includes the following:

- In November 2022, of the 748,271 people on the NHS waiting list in Wales, 101,014 were waiting for orthopaedic services.

- According to national data, RTT targets have not been met since 2011.

- There was a 13% variation in the percentage of people waiting 2 years or more across health boards in Wales. The Health Board had the highest percentage of people in that category, 23%.

- A comparison of the total number of patients within each health board in Wales that had been waiting for over 36 weeks for orthopaedic treatment (per 100,000 population) reveals the Health Board had the largest number, over 300% higher than the health board with the lowest number.

- Orthopaedic and musculoskeletal problems can be debilitating and can significantly affect people’s quality of life. In turn, this can cause wider deterioration in patients’ physical and mental health.

- Factors affecting national service recovery comprised: referral rates that dipped during the COVID-19 pandemic are likely to rise again; demand for linked services such as diagnostic imaging has risen; a reduction in bed capacity by 12% over 10 years; a slow re-start of services following the COVID-19 pandemic; demographic changes will mean greater future demand.

- Action being taken across Wales included: community-based schemes that offer preventative approaches and input from the GiRFT team.

- Recommendations for action consisted of: application of the national strategy developed by the Welsh Orthopaedics Board accompanied by buy-in from local clinical teams; a renewed focus on efficiency; a wider view to be taken of the system supporting the orthopaedic pathway; investment in technology and estate; regional models should be at the core of delivery plans; patient experience and outcomes should shape clinical decision and advice.

The background events

The wider orthopaedic context

12. Patients awaiting orthopaedic surgery are added to a waiting list. They are categorised by a consultant orthopaedic surgeon depending on their degree of urgency. Patients who are on the waiting list are known as elective patients, rather than emergency patients who need immediate treatment, for example, as a result of injury.

13. Within the Health Board's area, orthopaedic surgery is carried out at 2 hospitals: Morriston Hospital ("the First Hospital") and Neath Port Talbot Hospital ("the Second Hospital"). The First Hospital has critical care facilities, so some patients, who have additional health needs, for example, sleep apnoea, need to have their surgery there rather than at the Second Hospital, which does not have those facilities.

14. According to the BOA Standard, some critical care beds should be reserved only for orthopaedic patients (also called ring-fenced beds). During the latter part of **2019**, elective orthopaedic surgery could not be performed at the First Hospital for a period of about 6 months because unscheduled care pressures meant it was unable to have beds ring-fenced for orthopaedic surgery. It therefore lost elective surgical capacity in order to manage emergency admissions.

15. As of December 2019, the Health Board had introduced the following measures to manage the situation:

- It was outsourcing (a term used to describe attempts to seek help with service provision from other health boards) appropriate patients to allow the First Hospital to focus on patients with more complex needs. Complex patients could not be outsourced as most outsourcing facilities (such as private care) did not have access to critical care facilities.

- It was recruiting and training more orthopaedic theatre staff and backfilling appointments at vacant theatres to cover staff shortages.

- It insourced (a term used to describe services deployed to utilise spare, out-of-hours capacity, typically at the weekend, within a health board) orthopaedic surgery to the Second Hospital for a limited number of appropriate patients.

16. At the outset of the COVID-19 pandemic in Spring **2020**, the First Hospital lost the capacity to treat complex patients again. As the higher risk category of patients could only be treated at the First Hospital, they were therefore not receiving treatment during the period of the pandemic.

17. In November **2021** the Health Board approved development of a major new Orthopaedic Centre at the Second Hospital to expand capacity for orthopaedic surgery. It said the Orthopaedic Centre would be ready to accept patients in early 2023.

18. On 10 June **2022** the GiRFT team met with the Health Board's Chief Executive Officer ("CEO"). The report issued following the meeting concluded that there was no satisfactory solution in place for patients who could only be treated at the First Hospital. The report said "A lack of ring-fencing in [the First Hospital] remains, this equates to an Infinity waiting list for those patients…" with complex needs. Other challenges identified included a lack of workforce and elective theatre capacity, an ambiguous management structure, and a lack of standard operating procedures including ambulance resource.

19. In July the Health Board reported the routine waiting time for orthopaedic surgery was 259 weeks and the urgent waiting time was 253 weeks. In December 2019 the routine waiting time had been 159 weeks and the urgent waiting time was 139 weeks.

20. The Health Board opened discussions with a neighbouring health board in July to establish if it had the critical care capacity to assist it with outsourcing patients who required an increased level of care. These discussions were not successful.

21. On 10 October a meeting took place between the Health Board's CEO, the GiRFT team and others. A failure in the duty of candour to patients was highlighted, with patients coming to harm on waiting lists with no solution in sight. The Clinical Lead of the GiRFT team said, in response to a comment that 35% of the patients who had been waiting longest for orthopaedic treatment in Wales were under the care of the Health Board "People have known this for a long time with no solution." The CEO commented, "We have underinvested in orthopaedics for years".

22. On 1 November my Investigation Officer received an email from the Planned Care Improvement and Recovery Team ("the PCIR Team") at the NHS Wales Delivery Unit (this is an all-Wales organisation which supports Welsh health boards to improve safety and quality of patient care). The PCIR Team explained that the Health Board's orthopaedic waiting list had been a focus of discussion and challenge for a number of months. Members of the PCIR Team had met with the Health Board's CEO and others to find a way forward. They acknowledged that whilst all health boards in Wales have long orthopaedic waiting times, the Health Board's capacity was the most restricted with regard to facilities for patients with complex needs. During November the ring-fenced beds were reinstated at the First Hospital, but only for a fortnight before service pressures meant the ring-fencing was removed.

23. On 10 January **2023** The First Minister was asked a question in the Senedd regarding waiting times for orthopaedic surgery within the Health Board's area. The question highlighted that waiting times were in excess of 4 years and said that the Health Board had pointed to historic underfunding of orthopaedic surgery. The First Minister said that the

Health Board had a plan to concentrate planned orthopaedic surgery at the Second Hospital, whilst retaining 10 beds at the First Hospital for more complex cases.

24. On 12 January the PCIR Team confirmed that the Orthopaedic Outpatient Department had moved to the Second Hospital and said outpatient capacity had increased, as had the number of patients removed from the waiting list. The PCIR Team confirmed beds that were ring-fenced for orthopaedic surgery were reinstated briefly at the First Hospital in November 2022. However, recent bed pressures meant that these beds were currently not in use by orthopaedic patients, with general medical patients using them instead. There was no date set for reinstatement of the ring-fencing.

25. The PCIR Team also said that a plan to open additional beds with enhanced recovery facilities at the Second Hospital had been delayed due to clinical concerns about the potential to manage complex patients at this site. This delay meant that fewer complex patients from the "First Hospital only" list were eligible for treatment at the Second Hospital's enhanced recovery unit. To address this, the Health Board was in discussion with the Welsh Ambulance Service NHS Trust ("WAST") about contracting a stand-by ambulance to allow a transfer of any potentially unwell patients from the Second Hospital to the First Hospital's Critical Care units.

26. On 17 May members of my staff met with a team from the NHS Executive ("the Team") to discuss the orthopaedic waiting list at the Health Board. The Team clarified that it was likely the anaesthetists at the Second Hospital had been risk averse when it came to surgery for patients with additional health concerns. They explained that the Health Board had been liaising with a centre of excellence for orthopaedic patients in England regarding potential approaches for treating patients with secondary heath concerns at the Second Hospital, to allay its anaesthetists' concerns. The team said they were hopeful a high proportion of patients who had been regarded as suitable for treatment at the First Hospital only might be able to receive surgery at the Second Hospital from September.

27. The new orthopaedic theatres at the Second Hospital were opened by the Health Minister on 15 June.

What happened regarding Mr C?

28. After attending an appointment with a consultant orthopaedic surgeon, on 30 January **2020** Mr C was added to the NHS routine inpatient waiting list for surgery to his left hip.

29. An X-ray taken on 3 March identified severe osteoarthritic (degenerative joint disease or "wear and tear") changes in Mr C's left hip joint, which had worsened in comparison with a previous X-ray taken in 2019. Moderate degenerative change was also noted in the right hip joint. The notes said a surgical opinion should be considered.

30. On 10 August the Health Board responded to an enquiry from an MP regarding Mr C and his wait for surgery. At that point, Mr C had waited for 25 weeks, and his projected waiting time was approximately 168 weeks.

31. On 12 March **2021** Mr C's GP requested that the Health Board expedite Mr C's surgery. The request said that Mr C was wheelchair bound and was struggling to carry out most normal activities of daily living. His pain was so severe that tramadol (a drug used to treat moderate to severe pain) was having a minimum effect. The request also noted that Mrs C had previously had a liver transplant and was struggling to care for him.

32. Mr C was invited to, and attended, a POA on 13 April. The invitation said that should Mr C fail to attend; his name would be removed from the waiting list. It also said, "Please note this does not mean your surgery is imminent". Mr C was identified as needing to have his surgery at the First Hospital, where critical care was available should it be needed post-operatively. He was noted as having secondary health concerns that included previous sleep apnoea. He was recorded as needing an anaesthetic assessment.

33. Mr C attended an appointment on 4 May with a consultant spinal surgeon. She noted there was no reason why he could not undergo a conventional general anaesthetic for his hip replacement. She recorded that, due to the pain from his hips, Mr C had become a wheelchair user, could not use the stairs and was sleeping in a chair in his living room. She

requested an X-ray of his pelvis in case his right hip had deteriorated since March 2020 and copied her letter to the Consultant Orthopaedic Surgeon who was due to see Mr C regarding his left hip. Mr C was upgraded to a category 2 patient in June, based on the FSSA Guide.

34. An anaesthetic assessment dated 7 July confirmed Mr C was only to undergo surgery at the First Hospital because of his previously untreated sleep apnoea.

35. On the same date, Mr C was told his blood results had been reviewed and a repeat blood test was necessary. He was asked to arrange an appointment. Mr C received a total hip replacement information pack on 8 July.

36. Mrs C wrote a formal letter of complaint to the Health Board on 26 October.

37. An internal email dated 28 October stated that Mr C's position on the waiting list was reset on 30 March 2021 after he could not attend an agreed appointment. The email stated Mr C had been waiting for 29 weeks at that point and the waiting time was 216 weeks, as a result of COVID-19 and capacity issues.

38. Mr C's POA for a total hip replacement expired at the end of February **2022**.

39. On 17 March the Health Board advised Mr C that they were unable to provide a likely timescale for his surgery but were looking at ways to increase the volume of orthopaedic surgery at the First Hospital.

40. On 26 April the Health Board wrote to the Consultant Orthopaedic Surgeon, stating that Mr C was awaiting total hip replacement. It asked if he would offer Mr C an appointment at his next available clinic for re-assessment. The Consultant Orthopaedic Surgeon replied that he would not, because Mr C was on his category 2 list for the First Hospital already, and he could not be escalated further. He said the Health Board needed to provide a solution for the case and that him seeing Mr C would not aid the process, which was completely out of his control.

41. On 20 January **2023** following a query from my Investigation Officer, the Health Board confirmed that Mr C's position on the waiting list had been reset in error in March 2021 after he re-arranged his appointment. The Health Board also said Mr C had since been removed from the waiting list altogether because his BMI was over 40. My Investigation Officer queried this decision and was informed that another mistake had been made. Mr C was re-instated on the waiting list for surgery. The Health Board said it was unlikely that Mr C would have been given a date for surgery any earlier regardless of his removal because the First Hospital was only operational for orthopaedic surgery for a fortnight in November.

42. Mr C had another POA on 27 February. On 4 May the Health Board confirmed there were 4 patients who could only receive treatment at the First Hospital who had waited longer than Mr C. The patient with the longest wait had been on the list for 70 weeks longer than Mr C.

43. Mr C underwent surgery on 4 July for a left total hip replacement, after a couple of cancellations due to trauma demand. After this, Mr C was referred for surgery on his right hip and he is currently awaiting that surgery.

Mrs C's evidence

44. Mrs C said that Mr C and their family were distressed that his deadline for surgery expired in February 2022, because it meant all the prior assessment and preparation was pointless. Mrs C explained that Mr C found the POA difficult, and it involved extremely uncomfortable X-rays. She said they felt misled by the NHS.

45. Mrs C believed Mr C was at risk because muscle wastage had meant he had become unbalanced and immobile, causing him to fall at least twice. Both his hips were now affected. She said he could not manage the stairs and reported in October 2021 that he was static in an armchair day and night because he could not manage to get into the bed provided by the NHS.

46. Mrs C said that Mr C's mental health was incredibly poor because he could no longer cope with his condition; this has had a significant effect on his whole life. His family has also been significantly affected, as Mrs C is

his carer despite having substantial health difficulties herself. She said she was physically and mentally exhausted and had been taking prescription medicine to assist her to cope.

47. At the time of bringing her complaint to this office, Mrs C said Mr C had not been assessed by his Orthopaedic Consultant for over 2 years. She wanted a date for immediate surgery. She suggested the neighbouring health board could assist. Mrs C said any future plans for service improvement would take time and would not help Mr C's situation, as he was in need of critical surgery. She said his suffering was cruel and soul-destroying, and he had wasted 3 years of quality time due to his pain.

The Health Board's evidence

48. In November **2018** the Health Board said a consultant orthopaedic surgeon's waiting list was 113 weeks. It said this was due to a general increase in demand and high volumes of cancellations of scheduled operations due to urgent trauma cases, resulting in a lack of beds. The RTT target at that time was 36 weeks.

49. In March **2019** the Health Board said there were 1,000 patients who had waited for over 36 weeks for orthopaedic surgery, and it was therefore in breach of the Welsh Government RTT guidelines that were in place at the time. It explained the First Hospital was a centre for many complex surgical specialities and acted as the major Accident and Emergency service for a significant proportion of the surrounding area. This caused demand for beds and services to be unpredictable.

50. The Health Board apologised for the distress and disappointment Mr and Mrs C experienced because Mr C's initial POA did not lead to a date for surgery. It said that, following his review in clinic, it was identified that Mr C was a complex patient who needed to be treated in the most appropriate clinical environment for his requirements. The Health Board said there was little elective surgery taking place at the First Hospital at that time due to the COVID-19 pandemic and other pressures.

51. The Health Board said POA appointments were used as a method to establish which patients on the waiting list were suitable for surgery at which hospitals. They said a new process was implemented towards the end of 2021, which involved patients completing a screening questionnaire.

52. Commenting on a draft of this report the Health Board said that in 2022, it recognised there was an issue with consistency of approach to waiting list management. It submitted a proposal to fund a Patient Access Service, which would see the centralisation of waiting list management for both outpatient and inpatient services within a single team, co-located with a centralised outpatient function. The Health Board said it also funded a specific Referral to Treatment "RTT" Management Team to develop Health Board wide policies for all waiting list management and standardised training packages to ensure consistency of approach across all its services.

53. The Health Board stated that it could not guarantee individual staff would not make errors in administering waiting lists. However, it was confident that this additional focus and resource would put all reasonable measures in place to minimise errors and identify them at the earliest opportunity. This would ensure any delay or distress to patients would be addressed immediately.

Comments made by the Welsh Government

54. The Welsh Government said it is fully aware of the challenges associated with the delivery of orthopaedic waiting times across Wales, particularly within the Swansea Bay Health Board, over a period of years. It said it has taken the following actions to support health boards. These include:

- Additional resources and investments for new theatres.

- Engagement of the GiRFT team to support and help health boards increase efficiency and productivity.

- Engaging the orthopaedic clinical network to develop a comprehensive strategy and detailed demand and capacity analysis to support all health boards to effectively plan.

- A clear mandate to all health boards to prioritise (after urgent patients) their long waiting patients.

- A clear escalation of the Health Board to Enhanced Monitoring for poor performance.

Analysis and conclusions

55. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.

56. In reaching my conclusions, I must consider whether there were failings on the part of the Health Board and, if so, whether those failings caused an injustice to Mr C or his family. In doing so, I have considered whether the actions of the Health Board met appropriate standards rather than best possible practice. I have taken into account the COVID-19 context, which began shortly after the time Mr C was placed on the Health Board's waiting list and created extreme pressure for staff.

a) Mr C has had to wait an unacceptably long time for orthopaedic surgery when taking account of his clinical need and the impact his condition is having on his daily life.

57. Mr C began experiencing pain in his left hip joint in 2019 and was placed on the Health Board's waiting list for surgery in January 2020 as a routine patient. He also experienced degeneration in his right hip. He attended a POA for a left total hip replacement on 13 April 2021. His condition worsened to the point where he was reassessed under the FSSA Guide as a category 2 patient in June 2021 (procedure to be performed within a month). Mr C underwent his surgery on 4 July 2023. He had been a category 2 patient for 25 months and had been awaiting surgery for 43 months. He had a difficult patient journey with errors being made by the Health Board regarding his place on the waiting list for treatment, including having his position on the waiting list reset in error in March 2021 and again later being removed from the waiting list in error. These errors amounted to maladministration on the part of the Health Board. These errors were not picked up by the Health Board but were resolved due to queries from this office during my investigation. Had

this not been the case then Mr C would still be waiting, as his list position had been moved as a result. I note the Health Board's later efforts to improve waiting list mismanagement.

58. The BOA Standard states that beds must be ring-fenced for orthopaedic patients to maintain a safe elective orthopaedic environment. If this is not possible, the BOA Standard states that surgery should not proceed. I have noted the Health Board's explanation that, in following this guidance, they lost capacity for orthopaedic surgery at the First Hospital for 6 months in 2019. I have seen that capacity was lost again at the outset of the COVID-19 pandemic in 2020 and despite ring-fencing being reinstated briefly, later that year, the facility remained unavailable. This means that few orthopaedic patients with complex needs have received treatment since 2019.

59. The Health Board explained that this was due to a continued high level of demand for emergency care and the National Blueprint report acknowledged the challenge involved. However, I have also seen that the situation has been recognised for a significant amount of the time and the CEO of the Health Board acknowledged there had been underinvestment in orthopaedic treatment for years.

60. The waiting list for orthopaedic surgery at the Health Board has been in excess of 4 years. Efforts have been made by the Health Board to improve this issue, especially for patients with complex needs. For example:

- The development of a new Orthopaedic Centre at the Second Hospital, which was approved in November 2021 and opened on 15 June 2023 (albeit with a limited ability to support the needs of complex patients).

- Insourcing of appropriate patients without complex needs to the Second Hospital from September 2021 onwards.

- Discussions in July 2022 with a neighbouring health board to establish if it had the critical care capacity to assist the Health Board with patients who require an increased level of care.

- The NHS Executive considered it likely that anaesthetists at the Second Hospital may have been risk averse when it came to surgery for patients with additional health concerns and steps have been put in place to consider their approach.

61. I acknowledge that there is a resource issue within the NHS more widely and within orthopaedic surgery specifically. I also acknowledge the steps the Health Board has taken to increase capacity in the future. I have also taken account of the effect of the COVID-19 pandemic that has stretched both staff and resources significantly. However, I note that the Health Board said it was experiencing difficulty meeting demand for orthopaedic care as far back as 2018 (well before the pandemic), when it was already exceeding targets set by the "RTT guidelines applicable at the time by over 200%", (the Audit Wales report explained targets have not been met nationally since 2011).

62. Also, whilst all health boards in Wales have long waiting times, the Health Board's capacity is the most restricted with regard to facilities for orthopaedic patients with complex needs. This is demonstrated by the GiRFT report, which identified significant variation between health boards in the way patients are treated and therefore in their outcomes. The GiRFT Team also said more than a third of the patients who had been waiting longest for orthopaedic treatment in Wales were under the care of the Health Board.

63. There has been a period of several years when very little provision has been made for patients with complex requirements to access orthopaedic surgery. I would expect to see that the Health Board had taken more action from the outset to improve its level of service to these complex patients, which includes Mr C. Although the Health Board did make the efforts noted above to improve its service, it did not begin to do so until 2021, despite problems being recognised much earlier. It is my view that the Health Board could have sought to identify interim solutions sooner than it did. I regard this failure to do so as evidence of service failure.

64. Mr C, and many other patients on the waiting list, has been directly affected by the Health Board's poor performance, and in particular the issues surrounding the treatment of more complex patients. Mrs C has provided a full explanation of the pain and distress Mr C experienced whilst awaiting his surgery, and the effect that has had on her own wellbeing.

65. I note that, according to the FSSA Guide, Mr C should have received surgery during July 2021, but actually received it 2 years later. I cannot conclude that the Health Board's errors in Mr C's patient journey made a substantial difference to his waiting time. This is because very little surgery occurred during that period of time when the errors were made.

66. Although there is no guarantee that earlier efforts by the Health Board to fill the service gap would have improved the waiting list to the extent that Mr C would have received care sooner, its failure affected his chances of doing so. In my view this represents an injustice. I therefore **uphold** this complaint.

b) Mr C's expectations were mis-managed by the NHS regarding the POA he attended on 13 April 2021.

67. A deterioration was identified in Mr C's left hip joint in March 2020, and he was invited to attend a POA on 13 April 2021. I note the letter did attempt to manage Mr C's expectations somewhat, as it said, "Please note this does not mean your surgery is imminent". Mr C was recorded as having several complex needs including sleep apnoea, which meant he needed an anaesthetic review to assess how these risks might be managed. The assessment took place on 7 July and found Mr C was only suitable for surgery at the First Hospital.

68. At this point, the Health Board was unable to provide elective orthopaedic surgery at the First Hospital and had been in that position for some time. Even so, it asked Mr C to arrange a repeat blood test and sent him a total hip replacement information pack. I have noted that the Health Board changed its process a few months later to include a screening questionnaire to save patients (to whom they could not offer surgery at the time) from needing to attend POAs.

69. In its response letter to Mrs C's complaint, dated 7 December 2021, the Health Board said at that point, Mr C's waiting time was 29 weeks. I therefore consider, given what we know about the anticipated waiting times in 2021, it was highly unlikely that Mr C's surgery would have taken place before the expiry of the POA at the end of February 2022. I accept that Mr C was told the assessment did not mean his surgery was imminent, but it was reasonable for him to expect it would take place before the expiry date. I consider the Health Board ought to have been aware of this, and should have taken this into account when making arrangements for a POA which was likely to expire before surgery could be offered.

70. I take on board that it was the POA that led to the discovery that Mr C was only suitable for surgery at the First Hospital. However, the Health Board introduced a pre-screening questionnaire to serve this purpose later that year and it is my view this could have been done sooner, given the Health Board was well aware of its position by the time of Mr C's assessment. Although the Health Board's ability to meet the needs of patients who needed orthopaedic surgery was part of a complex situation, it was within its gift to respond candidly by communicating effectively, openly, and transparently with patients (in accordance with the principles of the PTR Scheme and, more recently, the duty of candour which the Health Board has been subject to in law since April 2023). The Health Board failed to do this and this, in my view, amounts to service failure.

71. As a result, Mr C was unnecessarily put through a painful and stressful experience that raised his hopes and legitimate expectation but resulted in disappointment. I therefore consider an injustice occurred as a result of the service failure and I **uphold** this complaint.

c) Mr C has not been reviewed by an Orthopaedic Surgeon since January 2020 and should have been re-examined so any deterioration in his condition could have been taken into account in determining his priority for surgery.

72. I have noted that Mr C was added to the Health Board's NHS routine inpatient waiting list on 30 January 2020, following an appointment with the Consultant Orthopaedic Surgeon. The Health Board has confirmed that

Mr C was originally a routine patient but was upgraded to a category 2 patient in June 2021. The FSSA Guide sets out that category 2 is the highest category possible for elective surgery.

73. I have also seen that the Consultant Orthopaedic Surgeon was asked to offer Mr C an appointment for a further review in 2022. The Consultant Orthopaedic Surgeon declined (for the reasons set out above). He said the matter lay with the Health Board to resolve, as it was a resource issue.

74. I have set out above that the Health Board could have done more to explore the resource issue that has caused Mr C to wait for so long for his surgery and it could have communicated better with Mr C regarding his position. However, I do not consider that a further review with the Consultant Orthopaedic Surgeon would have achieved any benefit for Mr C, as he was already in the most urgent category. I therefore **do not uphold** this complaint.

Related investigations

75. I have been simultaneously investigating 3 other complaints about orthopaedic waiting lists at the Health Board.[1] While those complainants have different individual circumstances, each has been significantly, negatively impacted by the time the patients have been waiting for treatment. For each I have made a finding of maladministration and injustice relevant to their specific circumstances. It is plain to see that the Health Board has not provided the expected levels of care and service to a number of people on the waiting lists and that in addition to that, there are also individual failings which need to be considered alongside improvements to the service.

76. Part of my role is to recommend improvements where I have identified failings. I find myself in the unusual situation where I am unable to make recommendations for systemic improvement of management of the length of the waiting lists. This is because a national strategy developed by the

[1] Case references: 202200764; 202200361 and 202201496.

Welsh Orthopaedics Board is in place and the Health Board is being assisted by the PCIR Team to adopt the GiRFT report's recommendations and the National Blueprint report's strategy. They are better placed to assess available resources and how they might be used to improve waiting times. I have no role in decisions about the allocation of resources.

77. That said, while patients are waiting for surgery on the list they should be treated fairly in relation to the management of their place on that list, how they are communicated with about the time it is likely to take to receive treatment and to have their expectations fairly managed. The maladministration identified, in the cases I have investigated, demonstrates that patients have also been treated unfairly because of the way the list has been managed. The recommendations below therefore seek to address the failings which have been specifically identified in Mr C's patient journey while waiting on the list.

78. I acknowledge the Health Board's actions to improve waiting list mismanagement, but I also remain concerned that these individual failings might indicate an existing systemic issue relating to the way that waiting lists have been managed. I have therefore made an additional recommendation to audit the waiting list and identify whether similar failings have applied to others on the list.

79. I am sharing this report directly with the Minister for Health and Health Inspectorate Wales. I urge the Minister for Health, the Health Board, and the associated health organisations to expedite plans to find ways to deliver care to those patients who have been waiting an inordinate amount of time.

Recommendations in respect of Mrs C's complaint

80. I **recommend** that within **1 month** of the date of the final report being issued the Health Board should:

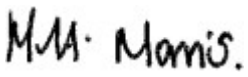
a) Write to Mr C and his family to apologise for the failures identified in this report.

b) Apologise to Mr C for the failure of the Health Board to explore solutions to the waiting list position sooner which has affected Mr C and all others on the list.

c) The main purpose of this office is to bring about service improvement rather than award compensation for service failure. However, I consider it is appropriate for the Health Board to offer Mr and Mrs C redress of £500 in recognition of the injustice, distress and time and trouble caused to Mr C because of having to undergo an unproductive POA and their time and trouble in pursuing this complaint.

d) Undertake an audit of the waiting list to establish whether any other errors have been made relating to the resetting of waiting list times or improper removal from the list. If any are identified - apologise to those patients and correct the waiting list date accordingly.

81. I am pleased to note that in commenting on the draft of this report the **Health Board** has agreed to implement these recommendations.



Michelle Morris 11 January 2024
Ombwdsmon Gwasanaethau Cyhoeddus/Public Services Ombudsman

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 0300 790 0203
Website: www.ombudsman.wales
Email: ask@ombudsman.wales
Follow us on X: @OmbudsmanWales