

## **CASE SUSTAINED**

**CS/540**

### **COMPLAINT AGAINST THE GIBRALTAR HEALTH AUTHORITY FOR ITS UNREASONABLE REFUSAL TO REFER THE COMPLAINANT TO THE UK FOR A MUCH NEEDED OPERATION AND FOR ITS ENSUING REFUSAL TO REFUND TO HIM THE COST OF THE OPERATION**

The events described in this complaint are not only another example, if such an example were needed, that the GHA's old Complaints Procedure was an abysmal failure. This complaint is a shameful indictment of the GHA itself and of its failure to provide an efficient service to its patients, a failure that caused the Complainant years of distress, expense, pain and suffering.

A man in his mid-forties approached the Ombudsman complaining that not only had the GHA acted unreasonably by refusing to refer him to the UK for a much needed hip operation, they were now refusing to give him a refund of the cost of the said operation.

The Complainant first attended the Orthopaedic Clinic at St Bernard's Hospital during the months of April or May 1994. He explained that he was diagnosed as having swollen ligaments in his left thigh and was prescribed with tablets to reduce the swelling. After attending the clinic a few times he was allegedly told that there was nothing wrong with him and that all he wanted was a 'sick note' so as not to go to work.

In June or July 1994 the Complainant attended a private clinic in Malaga, Spain where he was told to return to Gibraltar and insist to see an Orthopaedic Consultant. Back in Gibraltar the Complainant explained his situation to the then Hospital Services Manager who in turn spoke to the consultant orthopaedic surgeon ('the Surgeon'). Within minutes he arrived at the Hospital Services Manager's office and after examining the results the Complainant had brought over from Spain told him to attend to his clinic the next day.

When the Surgeon examined the Complainant the following day he stated that what the Complainant required was at least four weeks rest in bed with the least possible movement and to carry on taking the tablets prescribed to him. He further informed the Complainant that he was not to take any pain killers as this reduced the growth of his bone tissues.

The Complainant carried on attending the Surgeon's clinic for the next five years. In November 1999 he attended a private clinic in Gibraltar and after explaining his ailments to the doctor the Complainant asked him to recommend him an Orthopaedic Consultant in the UK to whom he go for a second opinion ('the UK Consultant'). The UK Consultant diagnosed the Complainant as suffering from Bilateral Avascular Necrosis of the Femoral Heads and his opinion was that a total hip replacement was warranted.

On 10th January 2000 he attended the Surgeon's clinic and showed him the written diagnosis of the UK Consultant with whom the Surgeon disagreed. At the time the Complainant was only 43 years old and the Surgeon was of the opinion that a hip operation should not be carried out until the Complainant was 55 years of age.

Unable to entertain the thought that he would have to wait twelve pain filled years before he could be operated upon and conscious of the adverse effects on his working life (he was a Services policeman), the Complainant carried out his own research on his condition and on the latest developments in the treatment thereof. He came across a breakthrough in hip replacement called the Birmingham Hip Resurfacing implant ('BHR') that according to all of the reports could transform the quality of life for the many thousands of patients with hip problems. In conventional hip surgery a plastic socket in the pelvis and a metal bar cemented to the remainder of the femur replace the worn out hip. The drawback of this surgery is that the plastic cup can wear out and since the operation involves cutting away at the bone, the procedure can only be done once. For this reason conventional hip surgery is only done as a last resort on older patients. BHR was an entirely different procedure and could be carried out successfully on much younger patients.

Convinced that BHR was what he needed to regain his long lost quality of life the Complainant accumulated documentary evidence on the advantages of BHR and when he next attended the Surgeon's clinic he asked for a referral. The Surgeon allegedly replied that this operation was very old and unsuccessful and that he would like to know if there was an agent here in Gibraltar promoting it as one only read about these successes in women's magazines. The Complainant claimed that he went on to inform the Surgeon that BHR had now been approved by the NHS in the UK and was currently available in thirty hospitals throughout the UK. This statement was apparently ignored by the Surgeon who proceeded to give him another appointment to attend his clinic for the following October.

Eight days later, on 18 January 2000, the Complainant wrote to the Hospital Services Manager complaining against the Surgeon's refusal to consider BHR. He asked the Manager to grant him the opportunity to enjoy a better quality of life by being sent to UK for the BHR prosthesis or alternatively to obtain the independent opinion of another Orthopaedic Consultant, as it seemed that the Surgeon was in no way prepared to accept the BHR. The Complainant enclosed a letter from a Birmingham based Consultant Orthopaedic Surgeon, the pioneer of the BHR procedure ('the Birmingham Surgeon'), in which the Birmingham Surgeon expressed the opinion that it would be perfectly possible to treat the Complainant successfully with a BHR prosthesis.

As with so many other complainants, the Complainant never got a substantive reply from the GHA.

Convinced that the BHR implant was what he needed, in March 2000 the Complainant approached the Ombudsman, pointing out that he had made a complaint against the Surgeon to the GHA but that his complaint was being ignored. Since the GHA

complaints procedure had not been exhausted the Ombudsman was unable to intervene, however the Ombudsman wrote to the Hospital Services Manager, copying the letter to the Minister for Health, to the Complaints Board and to the Chief Executive of the GHA. The Ombudsman also did not get any response.

The Complainant continued with his struggle for the GHA to refer him to the Birmingham Surgeon. He wrote to the Minister for Health informing him that he would have to get a personal loan so as to finance the BHR implant privately. The Minister read through the evidence submitted by the Complainant on the advantages of BHR as opposed to the conventional hip replacement and arranged for him to have a meeting with the Surgeon in the presence of the Hospital Services Manager and the GHA Director of Operations where it seems that the Surgeon reiterated his opposition to referring the Complainant to the Birmingham Surgeon. Eventually in another meeting with the Honourable Minister, the Minister informed the Complainant that he could do nothing more for him and that if the Surgeon did not give his recommendation the operation would have to be done locally. The Minister added that the GHA could not and would not send a patient for a second opinion to a Doctor or surgeon who was not recognised by the GHA.

The year 2000 turned into 2001 and the Complainant appealed to the Chief Minister as his 'last resort', complaining about discrimination and pointing out that whereas the GHA refused to refer him to the Birmingham Surgeon because he was apparently not recognized by the GHA, the Complainant had evidence that other patients *had* been so referred. He went on to inform the Chief Minister that he would have to re-mortgage his house in order to be able to afford the BHR implant on a private basis. Eventually the Complainant remortgaged his house and in May 2001 he paid for the BHR prosthesis on a private basis. The surgery was a success.

Since 2001 the Complainant continued to maintain that the GHA's refusal to sponsor his operation was wrong and discriminatory and he never let up on his campaign to obtain a full refund from the GHA for all of the expenses incurred by him, including the cost of the surgery. His appeals were all ignored by the GHA. Having been given no joy by the GHA the Complainant once again turned to the Ombudsman asking him to investigate his treatment at the hands of the GHA. This time round however, the complaint was taken up on the side of the GHA by the newly appointed Implementation Team Leader who took it upon himself to solve the problem to everybody's satisfaction. Within a month of receiving the details of the complaint from the Ombudsman, the Implementation Team Leader on behalf of the GHA acknowledged the liability of the GHA and gave him a cheque in full satisfaction of his claim.

In his Annual Report for the year 2003, the Ombudsman declared that there was a lot that could be said about the failure of the old GHA Complaints Procedure however:

“given the new wind of change that appears to be blowing down the corridors of the Gibraltar Health Authority, at present, it is prudent to wait developments and

closely monitor the performance of the GHA in the coming months.” (Public Services Ombudsman Annual Report 2003, page 81, para 9.5.6)

The Ombudsman referred to his words in the Annual Report and was pleased to confirm that the windows of the GHA had been opened wide and the winds of change were indeed blowing through the corridors of 17 Johnstone’s Passage. The Complainant had gone through years of distress, expense, pain and suffering and this was inexcusable but there was no point in reopening old wounds. The most important thing was that the GHA had recognised that the Complainant had been wronged and steps had been taken to correct this wrong.

The Ombudsman sustained the complaint unreservedly, pointing out that he hoped that this was the last time that such a complaint landed on his desk.