

4 Innisfail Gardens
Aldershot
GU11 3XG

23 November 2020
(Updated 30 November 2020)

OPEN LETTER

Dear Maggie MacIsaac

I write in response to your letter from this morning, 23 November 2020.

I am very disappointed that you have decided to give up on trying to find a resolution to the failings in the case relating to my wife. You have accepted that failings took place and that my wife is clearly eligible for NHS Continuing Healthcare and will most likely be eligible for the rest of her life, unless there is an unlikely miracle cure.

You should be deeply ashamed that West Hampshire CCG does not agree with you as it continues to defend its unlawful actions.

The letter received from you today fails to recognise that the process agreed between yourself and Niche Consulting is different to the process we agreed on 2 July 2020. It also fails to state how the process offered in the end is fair, equitable, transparent and lawful.

You agreed that it was right and proper that I should have the opportunity to challenge the assertions of West Hampshire CCG prior to any draft report being written. Now you are stating that this is not possible. How is it impossible to have an investigation process that enables West Hampshire CCG to hear my challenges and respond to them, and also provides me with the same opportunity in respect of their assertions?

For clarity, I was fully prepared for the investigation by Niche Consulting and am still ready. But only if the process is fair, equitable, transparent and lawful.

Furthermore, as a result of investigation, I am concerned by your choice of Niche Consulting to provide an 'independent' review of my case. According to the Niche Consulting website, of their associates one is a solicitor. Her name is Kiran Bhogal. She is a partner and head of the health team in London for Hill Dickinson LLP. Prior to that, she was a partner at Beachcrofts LLP and Weightmans LLP. All three of these firms are among the thirteen law firms appointed, by NHS Resolution, to the panel for the provision of health-related services (worth an estimated £523m over four years).

In addition, Mike Fulford (COO of West Hampshire CCG) and Stuart Ward (Board member of West Hampshire CCG who has been actively involved in my case) both appeared in emails with Kiran Bhogal, who was a solicitor for Hampshire Primary Care Trust in the Gosport War Memorial Hospital scandal. A scandal that "shortened the life" of a much-loved relative of mine.

We have concerns around the 'independence' of Niche Consulting. They stated that we would be denied access to copies and / or redacted transcripts of the recordings of their interviews with West Hampshire CCG staff. Those interviews would contain personal data regarding me and my wife. Failing to provide these would be a breach of our GDPR rights. Rather than proceed with the review knowing that we would want copies of the recordings, Niche Consulting withdrew.

You have a duty of financial stewardship for your organisation. A long and costly 'independent' investigation, that has access to legal support from Kiran Bhogal, could easily be avoided. As I have consistently stated, one day is enough. To make the investigation easier, I limited it to nine key points. These could have been debated throughout the course of one day with a person of your choosing to determine the final position of your organisation. You have repeatedly rejected this course of action. Whilst I accepted an alternative approach, until you and Niche changed it, I still believe that this is the most financially and time prudent approach.

You know that your response is forcing us to take legal action against you and your organisation. Being aware of the experiences of Peter Duffy and Dr Chris Day, I believe that you are acting callously knowing what harm this will do to the physical and mental health of me and my family when all the legal pressures are applied against us to encourage us to give up. Due to the time and cost (at the taxpayers' expense) that this will put on your organisation, I am very disappointed that you will not provide a day to resolve this matter once and for all.

As you will have seen at the top. This is an open letter that will be distributed widely. I will start the process on the evening of Tuesday 24 November 2020, unless I am provided with a response that I deem acceptable. As always, I am available for a telephone conversation but only if you are willing to provide an investigation that meets the criteria that we agreed in July 2020.

Despite the personal challenges I face with your organisation, I have joined Rear Admiral Philip Mathias' campaign team for a judicial review into the NHS Continuing Healthcare scandal. You can visit the website that I created for the campaign at nhschcscandal.co.uk. I am confident that the team will support me in distributing this letter, and the reopening of my own national campaign.

Please note, I have repeatedly offered access to the recordings that I have of the review meetings. These offers have never been accepted by yourself or any other employee within your CCGs. In accordance with *NHS Protect: Patients Recording NHS staff in health and social care settings (2016)*, I am now considering my options for distributing these recordings.

Yours sincerely

Phil Austen-Jones

CC: Mike Fulford, Stuart Ward, Sarah Schofield, Peter Bibawy