

26 November 2020

Dear Liz

Thank you for your email of 26 November 2020.

Please could you advise me of the factual inaccuracies in my letter of 23 November 2020 so that I can make appropriate amendments. We wrote our letter in good faith and based upon the information available to us. I look forward to receiving the evidence of factual inaccuracies so that we can update the content of our letter.

While there have been numerous GDPR failings in my wife's case by WHCCG, I am happy to respond to the comments in your email about the recordings I have made. Your email states,

"In recording a meeting you will have collected the names, job titles, views and opinions of individuals who were at the meeting, and accordingly personal data was processed. As such, in order to record a meeting, you are required to have been lawful, fair and transparent in making that recording.

You did not take consent from those at a meeting to record their data or make it clear you would be recording and accordingly we do not consider you were entitled to do so."

However, your response is contradictory. If we were not entitled to make the recordings, how can it be appropriate to disclose any part of it? The recordings were made under the Data Protection Act 1998. Section 36 provides the exemption as the recordings were made for personal use. Furthermore, NHS guidance is clear:

"Unlike medical professionals, who are expected by the General Medical Council¹ to obtain patients' consent to make visual or audio recordings, patients do not need their doctor's permission to record a medical consultation or treatment. Patient recordings which are made either covertly and overtly in order to keep a personal record of what the doctor said are deemed to constitute personal 'note taking' and are therefore permissible...

"The content of the recording is confidential to the patient, not the doctor or healthcare staff. The patient can waive their own confidentiality as they wish; this could include disclosing the details of their consultation with third parties or even posting and/or sharing the recording in unadulterated form on the internet through social media sites...

"The recording of a consultation is likely to constitute processing of personal data under the DPA and as such it has to comply with the provisions of the DPA. There is an exemption in the DPA where personal data is processed by an individual for their own personal purposes. In such cases, the 'processing' does not engage the data protection principles of the act (the 'domestic purposes' exemption)."

(NHS Protect: patients recording NHS staff in health and social care settings, May 2016)

As such, the recordings were both lawful and fair. Whilst we did not openly inform the individuals for transparency, unlike the NHS, we are not required to disclose our desire to record a meeting.

With the growing media attention on the NHS Continuing Healthcare scandal, consideration needs to be given to public interest regarding any potential disclosure. You can be assured that we are working closely with a Certified Data Protection Officer to ensure that we are in accordance with the law.

As it is believed we were not entitled to record the meeting, it is surprising that the matter is only being raised now and not in the last two and a half years that WHCCG has known about them. As they have repeatedly informed us that they did robust complaint investigations, I trust that they have no concern about content of the recordings. For the sake of transparency, I very much continue to welcome you, Maggie, Peter or other suitable individual from the CCG to access the recordings. I anticipate that, once again, this offer will not be accepted.

I hope that you appreciate that I have answered all aspects of your email. I look forward to receiving a response to the remaining aspects of my letter from Monday.

Yours sincerely

Phil Austen-Jones