

21 December 2019

Dear Maggie MacIsaac, Stuart Ward and Peter Bibawy

Re: Rachael Austen-Jones – NHS Continuing Healthcare

Thank you for meeting with me on Thursday 19 December 2019 to discuss my wife's NHS Continuing Healthcare case. I hope that the spirit of the meeting is maintained over the coming weeks so that we can finally put an end to the matters that have occurred over the last couple of years. As indicated, we are ready for solicitors to take over the case but this is avoidable.

The purpose of this letter is to provide clarity of the actions we require from West Hampshire CCG (WHCCG) that will enable us to conclude the complaints that we have raised. As agreed, I am focusing on the key issues that have arisen. As such, there are many other failings that have occurred that we do not expect you to address in response to this letter. If we receive a response that we feel addresses the issues outlined below, it is unlikely that we will need to raise the other matters in the future. However, we trust that an internal review to identify lessons learnt would encompass the entire case.

Requested Actions

1. Admit and apologise, in writing, for the key failures (outlined below) of WHCCG that have occurred over the last two years.
2. Delete the records relating to the November 2017 and January 2018 reviews from the clinical file.
3. In order for us to be able to give informed consent for future reviews, outline how data will be processed, with particular reference to the following points.
 - a. After the January 2018 review meeting, the assessments and outcome were altered by the case coordinator and a senior manager without our knowledge or consent to further consideration of the sensitive data.
 - b. The outcome of our 7 February 2018 complaint was regarding the review process. Prior to investigation, a clinical judgement was made without our knowledge or consent for the sensitive data to be used in that way.

If you deem that the actions highlighted in points (a) and (b) have a valid legal basis, we would like copies of the policies/guidelines/regulations that allow it.

4. Compensation for the severe detriment that has occurred to us as a result of the inappropriate actions of WHCCG.

Key Failures of West Hampshire CCG

1. At the time of the November 2017 and January 2018 reviews, WHCCG did not provide us with a valid legal basis for them.
2. We were misled by WHCCG as to the reasoning for the reviews. As such, our consent was not valid as it was misinformed.
3. The reasoning for the review, as stated by Ellen McNicholas on 4 September, does not constitute a valid legal basis.
 - a. Failure to maintain records is a Data Protection breach, not a legal basis for review.
 - b. There is no evidence that the review was called due to claims regarding the role of the carers.
We have repeatedly stated that the care agency denied the various claims of WHCCG.
4. WHCCG repeatedly failed to respond to us about the fact that Roy Dube (case coordinator in the November 2017 review) had determined a Primary Health Need but changed the outcome to MDT

on the sole basis that we said we would appeal the reductions in care that he was seeking. (Note – WHCCG has accepted and apologised that Roy Dube made serious errors in regard to the evidence available.)

5. The wrong outcome was determined at the end of the January 2018 review meeting. On-going eligibility for NHS Continuing Healthcare should have been accepted, in line with the opinion of the case coordinator and the clinical evidence provided. The guidelines claimed did not exist. Pauline Dorn eventually admitted in the LRM of 15 February 2018, that the outcome of the January 2018 review meeting should have been that my wife continued to have a Primary Health Need and therefore still eligible for NHS Continuing Healthcare. We would like this confirmed in writing.
6. Following the review meeting in January 2018, it was wrong for Meriel Chamberlain to alter/influence the clinical assessment. She had no legal basis nor consent to do so.
7. Our complaints were not appropriately investigated.
 - a. Complaint 1 (re November 2017 review) – not all aspects answered.
 - b. Complaint 2 (re January 2018 review) – outcome determined by clinical judgement prior to investigation of complaint which was based on process.
 - c. Complaint 3 (re Complaints process) – not investigated.
 - d. Complaint 4 (re GDPR) – response does not hold up to any scrutiny and refused a Local Resolution Meeting, in contravention of WHCCG policy. We received no reply when we challenged the response.
 - e. There are no investigation records, resulting in no evidence to support erroneous assertions and statements in responses.
 - f. Contrary to policy and despite our requests, the complaints were not discussed with us prior to investigations.
 - g. There was refusal to answer legitimate follow-up questions which sought clarity and answers to omitted questions.
8. Documents were tampered with by West Hampshire CCG. These documents relate to the complaints file sent to the PHSO. In addition, WHCCG has failed to respond to the fact that over ninety emails were missing from the complaint file that was sent to the PHSO.
9. A private and confidential letter from us to Jo Craven was unlawfully accessed by WHCCG staff and sent to WHCCG solicitors in order to obtain legal advice.

As you are aware, we have evidence for everything we have stated. Considering the failure of WHCCG staff to handle our case appropriately with openness, transparency and regard to the Duty of Candour, we do not consent to them being involved in your response to this letter, unless we are informed and agree to the processing. In that event, we will provide you with all the information that you require but will request the opportunity to respond to any assertions made by WHCCG staff. We are open to further dialogue prior to your final conclusions in response to this letter to ensure that you have an accurate understanding of the case.

You will be aware of our national campaign that highlights the failings that we have faced. This is currently paused and will continue to be whilst we navigate through the agreed actions from our meeting on Thursday. In the spirit of wanting to move forward, if we receive an acceptable response from you, we will seek to bring the national campaign to a close. It would be preferable if we could reach a joint agreement on how this is achieved.

Yours sincerely

Phil Austen-Jones