



CURE THE NHS

Campaigning for better NHS care

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Dear X

With regard to how you can organise your own response to your situation, first it is worth your looking at the NHS Constitution, which came into force in January 2010.

Many NHS Trust websites contain a summary of patient rights but the best website I have found for this is:

http://www.eoe.nhs.uk/nhs_constitution/downloads/statement_of_nhs_accountability.pdf

http://www.eoe.nhs.uk/nhs_constitution/downloads/03_nhs_constitution-large_print_version.pdf

The NHS Constitution gives patients a statutory right to obtain answers about what went wrong with their medical treatment. I have to warn you that you may receive an entirely evasive response from the Trust, in which case you simply have to write back pointing out the ways in which the Trust's response is evasive or even factually incorrect.

This is the form of wording that I drafted that I suggest others may find helpful:

"Please find some questions about my medical care under the NHS Constitution.

As you are aware, some of these were raised by me with the Trust on (date) but your response of (date) did not give proper answers.

I am awaiting this information and that the delay in providing it is holding up my decision making process as to what course I should take now in trying to repair the dreadful damage that (name of Trust) has done to my health and my life.

You will be aware that under the statutory NHS Constitution, a patient has a statutory right to be given information to enable her to be involved in discussions about her health care and options.

You will also be aware that under the statutory NHS Constitution, a patient has a right to make choices about her NHS care and to be given the information she requires to enable her to make these choices.

You will further be aware that I am entitled to an explanation of what went wrong.

You will additionally be aware that the NHS Litigation Authority has been absolutely clear that "There are no barriers to giving an honest explanation if indeed you know [what happened].....The Litigation Authority has stated this position in a circular to the health service a number of times....We don't want anyone in the NHS to be using [the threat of litigation] as an excuse for not doing what we think is the right thing," says Mr. Walker. (Stephen Walker, Chief Executive, NHS LA in HSJ article).

No doubt you are already familiar with the content of the Circular quoted here: "Patients and their relatives increasingly ask for detailed explanations of what led to adverse outcomes. Moreover, they frequently say that they derive some consolation from knowing that lessons have been learned for the future. In this area, too, the NHS LA is keen to encourage both clinicians and NHS bodies to supply appropriate information whether informally, formally or through mediation." - NHS LA circular, 2009

Accordingly, please now ensure that the following questions are promptly addressed, and ensure that I have a response in twenty five days, i.e. on or before xxxxx in accordance with Dept of Health recommendations.”

Secondly, you are entitled under the Data Protection Act to obtain a copy of your patient file. However, the Trust is entitled to charge you up to a maximum of £50 for this. www.ico.gov.uk will give details of how to go about it and what you are entitled to, time limits for response etc.

Such documents are often very illuminating about attitudes, disinformation, falsified records etc. You are also entitled to make unlimited corrections under the Data Protection Act to any matters which are wrong or which you feel are misrepresentative. Tell the Trust that under the DPA, you want these corrections filing on your patient file and complaints investigation file.

If you want a copy of your data under the Data Protection Act, you may find it helpful to specifically word it in this way:

“Please process this formal data subject access request in accordance with the legislation by doing an exhaustive search of computerised and manually held data in your organisation, and let me have copies of all the data held on me by (name of Trust that runs hospital where you were treated)”

This avoids you running up your costs by making repeat applications and means that the Trust is legally obliged to send copies of things you may not have been aware of (not all clinical records will actually be placed on your paper file).

These latter matters may include but are not limited to:

- a. Statements from a number of Trust staff in response to the purported investigations of matters raised by you;
- b. Messages and comments in emails between staff about you;
- c. Notes about your matter by Trust complaints investigators;
- d. Notes of meetings and discussions between staff and minutes/notes of meetings held amongst Trust staff about you;
- e. Look through the emails between staff involved in your matter. There may be references in them to attachments and forwarded emails which have not been included in the documents disclosed to you.
- f. Are there references in emails between staff to meetings to discuss your matter? If so, have you been provided with the minutes/notes of the meetings?
- g. Has any of the content of any emails between staff been wrongly withheld or redacted (erased)?
- h. Have notes by Trust representatives with medical staff to discuss any medical issues raised by you been disclosed?
- i. Have all of the staff statements that have been disclosed been signed, and dated? If not, question this as an illustration of the incompetent way that this matter has been treated?
- j. Have draft documents referred to as discussed between staff been included?

- k. Have action plans that are referred to in correspondence between staff been disclosed?
- l. Computerised records, e.g comments and medical data that has been entered onto your computerised record by medical staff whilst you are on a ward

www.ico.gov.uk will give details of how to go about making Data Protection Act “data subject access” requests and what you are entitled to, time limits for response etc. Also how to complain if your request has not been dealt with by the Trust in accordance with its legal obligations.

Amongst other things, if you made any complaints about your treatment by Trust staff, make sure that you have full disclosure of the complaints investigation file, the contents of which are often very illuminating.

The Trusts don't have to disclose documents to which legal privilege attaches, and often try to exploit this. But legal privilege attaches only to (a) documents which were created with the dominant purpose of being used in current or potential litigation, and (b) to any document which was brought into being in order to obtain legal advice from a barrister or solicitor.

Views and correspondence on a legal or potentially legal situation from anyone who is not a solicitor or barrister do not attract legal professional privilege.

Accordingly, if anyone at the Trust is using titles such as “Head of Law” or “Director of Legal Services”, then ask them if they are professionally qualified as a lawyer, and what their qualification is. You can also check whether they are actually qualified as a lawyer with the Law Society www.lawsociety.org.uk and Bar Council www.barcouncil.org.uk.

If you do not want to spend the £50 to obtain a copy of your patient file and are able to go to the hospital, then you are entitled by law to read through your patient file free of any charge. Write to the hospital to arrange a date and time for this. You will need to take a form of identity with you, e.g. passport, driving licence.

If you are now disabled, then under the Disability Discrimination Act, the Trust has to make any reasonable adjustments required by you to enable you to read your file.

If you get an evasive or unhelpful response to your request to read through your file(s), then you may find the following wording useful:

“Please be clear that I am not requesting a copy of my file to take away with me - I wish to sit and read it at the hospital.

It is not actually necessary under the Data Protection Act data subject access request legislation for me to specify that I wish to see my medical records, but as requested I herewith specify : I wish to see all of my medical records as held on my XXXX Hospital files.

Neither is it necessary for me to fill out any application form.

However, if you want an application form filled out for your admin purposes, then [as I am disabled/visually impaired/etc] you will need it bring it along, fill it out and I'll sign it on the day.

If your hospital induced injuries have left you unable to work and in receipt of welfare benefits, then you may find

www.benefitsandwork.co.uk very helpful. It offers advice and support to those whose illness has resulted in an inability to work and a need to claim welfare benefits, and is particularly useful with regard to things like the Atos medical assessment.

You may also find a referral to a clinical psychologist via your GP or the hospital consultant to be helpful. Unfortunately, these resources are scarce and you may have to wait for some months. The psychologist can try to help you with coping strategies for your disability and dealing with your impaired lifestyle.

Lastly, you may want to consider obtaining legal advice about suing for negligence.

If so, and you do not qualify for legal aid (which may be abolished for clinical negligence cases at a not too distant future point), it is sensible to seek a conditional fee arrangement. Some law firms will expect you to pay between £1k and £5k upfront for initial analysis. Others have arrangements with their insurers whereby they can do the initial analysis free of charge.

Bear in mind that you are looking at clinical negligence, which is never an easy case to bring, as opposed to no-win, no-fee accident litigation.

Also, bear in mind when looking for a conditional fee arrangement that the law firm will want to be satisfied that there is a reasonable chance of success.

A sensible view is that if you can't get conditional fee representation, then no matter how poked off you are it probably isn't worth racking up not only your lawyers fees but also potential liability for the other side's fees should you lose. Obviously, that is a decision for each individual to make.

Also, be aware that litigating merely "as a matter of principle" is not an approach that any decent and ethical lawyer will recommend. All litigation is stressful. If you cannot obtain a conditional fee arrangement or legal aid, then it is also potentially financially ruinous. Never underestimate the twin effect on your life and your health.

There are two charities that may be able to find a "no-win, no-fee" law firm for you:

www.medicalclaims.co.uk gives basic advice on bringing legal claims (please note will probably be in a commercial deal with any lawyers that it recommends);

www.avma.org.uk gives basic advice on bringing a legal claim (please note will probably be in a commercial deal with any lawyers that it recommends).

You might also try the Bar Pro Bono Unit, who can provide free legal advice and representation in certain circumstances: www.barprobono.org.uk

Also, <http://www.lawworks.org.uk> offers help to groups and individuals and may be able to assist you.

For both of these, you will need to be referred by an authorised person –see their sites for details.

Lastly, the following campaign groups may also be able to offer you assistance in the way of resources:

www.curethenhs.co.uk;

www.nhsjusticegroup.co.uk;

www.dignifiedrevolution.org.uk;

www.patientprotect.org

www.patients-association.com

I hope that you find this response of some assistance. Please note that the advice is given without any legal liability.

My regards

Jan
