



CURE THE NHS

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Precedent – where NHS Trust is refusing to meet with patient as prescribed by pre-action protocol and NHS Litigation Authority.

Modify as required.

Please note that any settlement offered by a Trust in such a meeting is likely to be way below the appropriate rate, and you should seek legal advice before accepting.

Dear x

Thank you for your letter dated (enter date), received by me (enter date received – often with NHS Trust letters; this is two or three weeks later than the date on the letter).

Again, my words appear to have been misinterpreted.

I did not say that I "had launched a claim for clinical negligence against the Trust". Neither have I expressed a firm intention to bring a claim.

In fact, I said

"As you refer to the aim of this proposed meeting to be to provide a remedy for me, I assume that this would be on the basis set down in the pre-action protocol for resolution of clinical disputes?

If so, then as the Trust is aware, after several months of obduracy by Trust managers, I instructed law firm (name) to investigate my concerns. I would therefore need to check with them that they would be happy for me to attend such a meeting, and ascertain whether they would wish to accompany me. Perhaps you could confirm that this is the type of meeting that you have in mind, and I can then make the necessary pre-arrangements and revert to you."

My own words were specific. NHSLA will be able to confirm for you that investigation of a potential claim does not amount to "launching a claim" or expressing a firm intention to do so.

Indeed, NHSLA have made this clear to NHS Trusts a number of times, and I quote:

"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 below:
"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 NHSLA is keen to encourage both clinicians and NHS bodies to supply appropriate information whether informally, formally or through mediation." - NHS LA circular, 2009

The pre-action protocol for clinical negligence is clear that its aim is to try to avoid a formal legal action:

"The protocol –

- encourages a climate of openness when something has 'gone wrong' with a patient's treatment or the patient is dissatisfied with that treatment and/or the outcome. This reflects the new and developing requirements for clinical governance within healthcare;*
- provides general guidance on how this more open culture might be achieved when disputes arise;*
- recommends a timed sequence of steps for patients and healthcare providers, and their advisers, to follow when a dispute arises. This should facilitate and speed up exchanging relevant information and increase the prospects that disputes can be resolved without resort to legal action."*

It further states:

"A climate of mistrust and lack of openness can seriously damage the patient/clinician relationship, unnecessarily prolong disputes (especially litigation), and reduce the resources available for treating patients. It may also cause additional work for, and lower the morale of, healthcare professionals.....healthcare professionals and providers need to adopt a constructive approach to complaints and claims. They should accept that concerned patients are entitled to an explanation and an apology, if warranted, and to appropriate redress in the event of negligence. An overly defensive approach is not in the long-term interest of their main goal: patient care"

It further states that the aim of the protocol is to

- "encourage greater openness between the parties;*
- encourage parties to find the most appropriate way of resolving the particular dispute;*
- reduce delay and costs;*
- reduce the need for litigation.*

The general aims of the protocol are –

- to maintain/restore the patient/healthcare provider relationship;*
- to resolve as many disputes as possible without litigation.....*

The specific objectives are.....to ensure that sufficient information is disclosed by both parties to enable each to understand the other's perspective and case, and to encourage early resolution.....where a

resolution is not achievable to lay the ground to enable litigation to proceed on a reasonable timetable, at a reasonable and proportionate cost and to limit the matters in contention; to discourage the prolonged pursuit of unmeritorious claims and the prolonged defence of meritorious claim"

Accordingly, there would be nothing whatsoever improper in suggesting that any meeting to be held with a view to "providing a remedy" should be held in pre-action protocol terms.

It is a pity that your advisers and/or colleagues have misadvised you in this manner.

If a letter is sent to the Trust from my lawyers setting out a clear intention to issues proceedings, then obviously it would be inappropriate for any correspondence on my clinical dispute issues to continue on an informal basis between myself and the Trust, and any meetings would have to be held on a formal "without prejudice" basis.

Obviously, it is not for me to advise you, but since your own advisers appear to be misadvising you, then you might want to read through the pre-action protocol for yourself – it can be found on

http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_rcd.htm

Nonetheless, if you feel that such a meeting might prejudice the Trust's position, then there is no obligation on you:

"This protocol is not a comprehensive code governing all the steps in clinical disputes. Rather it attempts to set out a code of good practice which parties should follow when litigation might be a possibility."

My regards