

DAC BEACHCROFT

Our Ref: NHS001-1311220 - LAMR - Mark Ashley
Your Ref:
12 March 2021

Ms Elizabeth Perloff
6 Barrier Point
London
E16 2SB

BY E-MAIL ONLY - fromthepenof@my.com

Dear Ms Perloff

Our Client : Barnsley Hospital NHS Foundation Trust

I am the partner supervising Liam Riley's work. I refer to your two emails sent yesterday timed at 15:46 (to my colleague Emma Newell, and to Helen Vernon the Chief Executive of NHS Resolution) and 15:34 (to Ms Vernon and to Stephen Timms MP). Your correspondence appears to have been sent in response to Mr Riley's letter of the same date and its attachments.

I can understand you want to be sure that your concerns are being heard, and they are. Perhaps you are worried that NHS Resolution is unaware of what is being done in its name, but I can assure you they are aware. We work very closely with NHS Resolution, we provide frequent updates and we take their instructions on all significant matters affecting your claim. Furthermore, NHS Resolution can and does check the quality of the work that we do on their behalf, as indeed they do for all of the solicitors that they engage.

With this in mind, can I please ask you to not correspond directly with my client. My firm has been instructed to act on behalf of NHS Resolution and Barnsley Hospital NHS Foundation Trust, and you should correspond with us alone.

Your correspondence suggests that Mr Riley's letter is in some way unacceptable. You accuse us of attempting to "pick and choose deadlines", and you point to a lack of courtesy. In your email to Ms Vernon you suggest that the approach outlined in Mr Riley's letter is somehow dishonest, or is an inappropriate way to deal with a "lone sick individual".

Mr Riley's letter serves you with copies of our formal Acknowledgement of Service in respect of the two sets of proceedings that you have issued against DAC Beachcroft LLP. We are entitled to use Acknowledgements of Service; the rules relating to this are set out at Part 10 of the Civil Procedure

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Rules.

The Acknowledgement of Service permits us 28 days from service of the Particulars of Claim to file and serve a defence. This is entirely reasonable, particularly where you have commenced proceedings not against our clients but instead against us. We have not picked or chosen deadlines, we have merely used those which are prescribed by the Civil Procedure Rules.

Mr Riley's letter goes on to discuss procedural deficiencies in your claims. This is not an accusation, nor is it an attempt to be inflammatory or intimidating; it is a statement of fact.

For instance, you have commenced proceedings against DAC Beachcroft LLP. That means you are asking the partners of this law firm to pay you compensation for your orthopaedic complaints (this being the first of the two claims served), rather than the hospital. I am sure you can see that this is clearly wrong.

To give another example, the Civil Procedure Rules are clear about the things that need to accompany Particulars of Claim in cases such as yours. There should be a Schedule of Loss, and there has to be expert evidence, but you served neither.

Because of these and other errors we will be asking the Court to make orders in respect of both of your claims. Those orders will probably be made following a hearing, so you will have the chance to make representations to the Court before it decides whether to make the orders.

You might feel that by asking the Court to make orders, for instance to strike out one of the claims, that too aggressive an approach is being taken. Your preference might be that we file defences to both claims and see what happens. However, this would not be an appropriate way to conduct litigation because it would waste the Court's time and it would waste your time.

As noted in the letter, we will send you the applications (i.e. the documents which start the process by which we ask the Court to make orders) as soon as we can. If any part of the applications can be agreed then so much the better, as it will allow us all to focus on the relevant issues.

Because we will be making the applications, we will also ask the Court to make further extensions of time for service of the defences. Again, this is not picking and choosing dates but is instead a sensible approach to managing litigation.

I hope you will agree that on reflection Mr Riley's letter, and indeed the approach we intend to take, is not unreasonable, and that it is neither unfair nor dishonest nor discourteous.

Yours sincerely



Mark Ashley
for DAC Beachcroft LLP