

## GOSPORT WAR MEMORIAL HOSPITAL INQUESTS

### Issues to be raised at the start of the hearing on behalf of Dr Jane Barton

At a pre-inquest hearing on 19<sup>th</sup> January 2009 the learned Coroner indicated that he would hear any submissions from interested parties on the first day of the hearing. This document is intended to set out, in brief form, matters that those acting for Dr Barton intend to raise. In the circumstances that this case concerns ten deaths, and that the relatives of just four of the deceased are legally represented at this hearing, those acting for Dr Barton would be pleased if this document were distributed at the commencement of the inquest. Sufficient copies will be made available for that to happen, if the learned Coroner considers such a distribution appropriate.

### Questions for the Jury panel

The paramount issue for the Court, plainly, is to ensure that the hearing is fair to those who have an interest in the outcome, and that it is conducted in accordance with the law. It would be unfortunate, to say the least, given the timescale of the hearing with regard to the dates of the relevant deaths, and also given the probable length of the hearing itself, if jury verdicts were later to be appealed upon the basis of contamination.

It is submitted that the Jury panel should be told the broad details of the inquest, and mention should be made of the considerable press coverage that the build-up to the inquest has had. In addition to questions as to availability for the likely timescale of the hearing, the Jury panel should be asked the following questions before being sworn. If the answer to any question is "yes", then that panel member should be excused from serving upon this jury.

1. Do you know any of the following people; [names of deceased, names of relatives of deceased whose names will be referred to in evidence, names of witnesses, both live and rule 37 – to be read] ?
2. Are you connected in any way with the investigation that has been undertaken into events at the GWMH: for example, if you are a healthcare professional, or you are related to, or knew, any of the patients who died, and you have assisted that investigation?
3. Do you feel that your views in this case might be affected by press and media coverage that you have seen?

In a hearing concerning ten deaths and which will consider evidence from many witnesses there is a real risk of contamination. The Court should exercise caution to ensure that potential jurors do not know the deceased, members of the deceased's family, or any witness whose evidence is due to be placed before the jury. This is the basis for the first question above.

The reason for the second question above will be obvious.

As to the third question above, the Court must anticipate, firstly, that prospective jurors have been exposed to a great deal of press coverage of concerns about the GWMH in the past, and that the press coverage of the case will continue at the present high pitch. [A file of newspaper cuttings – mostly front page articles from local press – is available.] The intention behind the suggested question is to identify any potential jurors who would be so overwhelmed by press coverage as to be unable to consider the evidence in the hearing dispassionately, if there are any, and to stress the importance, to those jurors who remain, of reaching findings based solely upon the evidence given in the hearing.

Consideration should also be given to the issue of potential jurors' knowledge of the various hospitals and medical practices which will be referred to in the evidence. Perhaps most jurors will have been, or will have had a relative, treated in the major hospitals which will be referred to in evidence. Some jurors will have experience, either directly or indirectly, of the Gosport War Memorial Hospital. Some jurors may be patients, or friends or relations of patients, at the practice where Dr Barton has worked in general practice for many years. In addition, the Court should consider whether it would be appropriate to exclude certain classes of person from serving on the jury: doctors, hospital administrators, nurses, relatives of patients treated at the GWMH. As to these various issues those acting for Dr Barton have no submissions to the Court at this time.

### **The Scope of the Hearing**

The learned Coroner has expressed the view, at the pre-inquest hearing on 19<sup>th</sup> January 2009, that this hearing involves ten inquests, and that each would be conducted along traditional lines, in accordance with the Coroners Act 1988 and the Coroners Rules 1984 (i.e. not following the decision in Middleton [Regina (Middleton) v West Somerset Coroner and Another [2004] 2 WLR 800]) Accordingly, the matters to be determined in each inquest are limited to

- the identity of the deceased,
- when the deceased died,

- \* where the deceased died, and
- \* by what means the deceased came about his/her death.

Those acting for Dr Barton are concerned that witnesses should not be permitted to give evidence about deaths other than those with which the jury is concerned. It is submitted that witnesses should be stopped if, during the course of their evidence, they refer to deceased patients of the GWMH other than the ten patients who are the subject of the inquests.

#### **Matters contained in Expert Reports**

The reports of expert witnesses due to be called (Professor Black, Dr Wilcock) contain comments as to the quality of the medical records, and reference is made to General Medical Council guidance, in particular the booklet Good Medical Practice. If this case concerned one death those acting for Dr Barton would object to any such comments or reference to GMC guidance being admitted into evidence. That objection would be made upon the basis that such matters are wholly irrelevant to the matters with which the jury is concerned, since they do not touch the cause or causes of death, and that to introduce them into evidence would risk distracting the jury from their proper task. This hearing is not, nor should it be allowed to become, a trial of Dr Barton's fitness to practise, as judged by GMC standards. [In fact, Dr Barton is due to appear before a Fitness to Practise panel of the GMC in June 2009, to answer allegations with regard to her actions at the GWMH.]

However, those acting for Dr Barton recognise that there is a public interest in permitting the expert witnesses to give their views on the case; indeed, that there may be concerns expressed, in some quarters, if it appears that the experts have been prevented from expressing their opinions on this topic. In the circumstances of this exceptional case, therefore, those acting for Dr Barton would have no objection if experts were permitted to give a commentary upon the content and adequacy of the medical records.

Outer Temple Chambers  
16<sup>th</sup> March 2009

Alan Jenkins