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**General  
Medical  
Council**Regulating doctors  
Ensuring good medical practice

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**Date:** 22 January 2010

## **Media team briefing – Dr Jane Barton fitness to practise hearing**

### **Background**

Dr Jane Barton's fitness to practise hearing is scheduled to reconvene between 18<sup>th</sup> and 29<sup>th</sup> January 2010.

The hearing adjourned following the Panel's findings of fact in August 2009. (The previous session ran between 8<sup>th</sup> June and 21<sup>st</sup> August 2009).

The fitness to practise hearing also followed an inquest into the deaths of 10 elderly patients at the Gosport War Memorial Hospital (GWMH) in Portsmouth. The inquest found that three of the patients had been given inappropriate medication. There has been extensive local press interest in this case, and in addition, in-depth coverage from the Independent on Sunday, which has covered every stage of the case, including the inquest and calls to action from the families of patients affected by events at GWMH; the case was featured in the newspaper's highlights of 2009.

### **Positioning and key messages**

#### *Top 5 messages*

- We offer our deepest sympathy to the families and friends of those who died at Gosport War Memorial Hospital between January 1996 and November 1999.
- The fitness to practise hearing for Dr Barton relates to her treatment of 12 patients whilst working as a clinical assistant in elderly medicine at the Gosport War Memorial Hospital, Hampshire between January 1996 and November 1999.
- The GMC could not proceed with its investigation while two lengthy criminal investigations were underway. We also took the decision to await the outcome of the inquest into the death of 10 patients in case any new information, relevant to our investigation, came to light. As soon as the inquest was concluded we scheduled a Fitness to Practise hearing.

- It is well established in law that a police investigation takes precedence over the investigation of a regulator. This is because an ongoing police investigation might be compromised by the disclosure of evidence in another forum such as a GMC hearing. The police were therefore unable, for a number of years, to release their evidence to the GMC because their inquiries were still ongoing. Nevertheless the GMC made a number of requests that the evidence be made available at the earliest opportunity.
- Dr Barton had workplace undertakings and conditions which restricted her practice for a number of years. The IOP imposed conditions on the 11 July 2008.

### **Further key messages**

- Dr Barton is currently restricted by the GMC from prescribing diamorphine.
- The GMC's solicitors are in regular contact with all of those complainants, including families, whose complaints are being taken forward in relation to Dr Barton.
- We have a duty of confidentiality to both doctor and complainant. While police or other investigations are underway, the GMC can, on the basis of sufficient evidence, suspend or restrict a doctor's practice if patient safety could be at risk.

### **Public affairs**

The case has attracted support for Liberal Democrat Shadow Health Secretary Norman Lamb MP, who has called for a public enquiry. Norman Lamb tabled the following EDM on 21 January 2010:

<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=40279%0D%0A%09%09%09%09%09%09%09&SESSION=903>

That this House supports the calls for a public inquiry made by the families of the more than 90 elderly patients who died in extraordinary and unexplained circumstances at Gosport War Memorial Hospital between 1990 and 2001; expresses its dismay that despite the fact that concerns were raised first in 1991, the issue still remains unresolved despite repeated investigations by the police, a highly critical report by the Commission for Health Improvement in 2002, 10 inquests and a disciplinary hearing by the General Medical Council; notes that serious questions have been raised by the families involved and in the media about the robustness of the inquiries by the police, General Medical Council and Nursing and Midwifery Council; further notes that the police refused to disclose evidence to the General Medical Council to facilitate consideration of whether steps should be taken to safeguard patients safety; calls on the Secretary of State for Health to work with the Secretary of State for Justice in convening an independent public inquiry, recognising that only a public examination with equivalent powers to the Shipman

inquiry could satisfactorily consider the complex nature of the multiple deaths and satisfy the public interest in learning lessons about patient safety in such cases; believes that the establishment of an independent inquiry is consistent with the Government's commitment to putting the needs of victims and their relatives at the heart of the justice system; and further notes that the Portsmouth Coroner and relatives of the deceased have supported such a call.

**Media coverage:**

<http://www.telegraph.co.uk/health/healthnews/5189604/Families-call-for-fresh-police-investigation-into-Gosport-hospital-death-ward.html>

<http://www.telegraph.co.uk/health/healthnews/5189604/Families-call-for-fresh-police-investigation-into-Gosport-hospital-death-ward.html>

<http://www.independent.co.uk/news/uk/home-news/gosport-hospital-deaths-whos-to-blame-1645354.html>

<http://www.independent.co.uk/life-style/health-and-families/health-news/relatives-of-gosport-dead-demand-new-police-inquiry-1686290.html>

<http://www.independent.co.uk/news/uk/home-news/we-demand-justice-the-families-at-the-heart-of-gosports-hospital-scandal-1689030.html>

<http://www.timesonline.co.uk/tol/news/politics/article3953919.ece>

<http://www.timesonline.co.uk/tol/news/uk/article6133632.ece>

## **Q and A**

*Related specifically to the case of Dr Jane Barton*

### **Why did the GMC only take action in relation to Dr Barton's registration in 2008?**

It is well established in law that a police investigation takes precedence over the investigation of a regulator. This is because an ongoing police investigation might be compromised by the disclosure of evidence in another forum such as a GMC hearing. The police were therefore unable, for a number of years, to release their evidence to the GMC because their inquiries were still ongoing. Nevertheless the GMC made a number of requests that the evidence be made available at the earliest opportunity.

Dr Barton had workplace undertakings and conditions which restricted her practice for a number of years. The IOP imposed conditions on the 11 July 2008.

### **Was the information supplied to the GMC by the police sufficient/ of good quality?**

The police liaised with the GMC and released information to us on cases once it had been decided they did not warrant criminal prosecution. The police were therefore unable, for a number of years, to release their evidence to the GMC because their inquiries were still ongoing. Nevertheless the GMC made a number of requests that the evidence be made available at the earliest opportunity.

### **Have members of the public been at risk whilst Dr Barton has been practising without restriction?**

Dr Barton had workplace undertakings and conditions which restricted her practice for a number of years. The IOP imposed conditions on the 11 July 2008.

### **The CPS first gave the GMC information about Dr Barton in 2001 – why was nothing done at the time?**

The GMC acted on that information to secure a referral to a (professional conduct committee) panel, however this hearing was put on hold while the second police investigation took place.

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**Families of those involved in this case are not being kept up to date by the GMC – why is this?**

The GMC's solicitors are in contact with the families in the cases that *are being taken forward* in relation to Dr Barton.

**What powers does the GMC have to restrict doctors' practice whilst they are under investigation?**

The GMC can suspend or restrict a doctor's practice when it is in the public interest, in the interests of the doctor, or for the protection of members of the public and if we have sufficient evidence that such action may be necessary.

**\*Why can the GMC not carry out its own investigations whilst another (eg criminal) investigation is ongoing?**

Or

**Was the GMC's investigation delayed by that of the Police? (and in a more generic sense, why are the GMC's investigations delayed by the police)**

Yes. The GMC has awaited the outcomes of two lengthy criminal investigations and an inquest into the deaths of ten patients before proceeding with its own hearing.

It is well established in law that a police investigation takes precedence over the investigations of a regulator. This is because an ongoing police investigation might be compromised by the disclosure of evidence in another forum such as a GMC hearing.

**Are there any other doctors involved in the Gosport case? If so, is the GMC investigating?**

We can only confirm the registration status of individual doctors. Speaking generally, we cannot comment on the circumstances surrounding pending investigations.

**Why is the GMC not taking forward all of the cases which have been put forward in relation to Gosport?**

We have pursued those cases which raise an issue of possible serious professional misconduct.

**What is the GMC doing in relation to the Gladys Richards case?**

We are prosecuting the case of Gladys Richards.

**Why are some witnesses/complainants anonymised (and others not)?**

The charges are to be anonymised; at this stage we cannot confirm whether or not the patients will be anonymised, however, they are entitled to ask for anonymity; ultimately it is a matter for the Panel whether that is granted.

NOTE: the patients in the case are not anonymised.

**Why can't the GMC confirm identities when some are in the public domain?**

The GMC has a duty of confidentiality to complainants and it would not be appropriate to confirm their identities. Complainants and those giving evidence can identify themselves if they wish to do so.

NOTE: the patients in the case are not anonymised.

**How many panel members will be present for the hearing?**

There are 5 Panel members, with a lay majority.

**Why doesn't the GMC have to await the outcome of the inquest into the death of Gladys Richards when it has been awaiting the outcome of the inquest into the other 10 patients' deaths at Gosport?**

Whilst it is necessary for us to await the outcome of criminal proceedings before taking forward our own investigations, the GMC is not under an obligation to await the outcomes of inquests before opening their own hearings.

**Why are families/ complainants not given legal representation at GMC hearings?**

As the regulator, it is the GMC's responsibility to prepare and present the case against the doctor.

**The Independent on Sunday has accused the GMC of failing to deal '*properly and promptly with serious complaints of professional misconduct against Dr Barton*' what is your response to this?**

We do not comment on the individual cases.

It is well established in law that a police investigation takes precedence over the investigations of a regulator. This is because an ongoing police investigation might be compromised by the disclosure of evidence in another forum such as a GMC hearing. The police were therefore unable, for a number of years, to release their evidence to the GMC because their inquiries were still ongoing. Nevertheless the GMC made a number of requests that the evidence be made available at the earliest opportunity.

Dr Barton had conditions, placed on her by her employer, which restricted her practice for a number of years.

Yes, the Council for Healthcare Regulatory Excellence (CHRE) may appeal against certain decisions made by a GMC fitness to practise panel if they consider the decision was unduly lenient.

The CHRE has the power to refer a decision by a Fitness to Practise panel to the High Court (or its equivalent elsewhere in the UK) for the protection of the public, if it considers that the decision is unduly lenient. The CHRE has 28 days to decide whether to refer a decision following the doctor's 28-day appeal period.

A doctor has 28 days in which they can appeal a decision made by a GMC fitness to practise panel to the High Court (or its equivalent elsewhere in the UK).

**Previous line:**

*"Dr [Code A] currently has conditions on her registration. These conditions were put in place by an Interim Orders Panel (IOP) which has the power to restrict a doctor's practise while an investigation is on going.*

*"At the end of the investigation, a case could be referred to a fitness to practise panel hearing."*

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\*eight of which are being considered by the GMC

*FTP – general questions and lines to take*

### **Does the GMC punish doctors?**

The GMC's primary duty is to protect patients. The purpose of the GMC's fitness to practise procedures is to take action when a doctor's performance or conduct falls below the standards expected.

The GMC has legal powers to take action where a doctor's fitness to practise may be affected by poor skills or performance, ill health, misconduct or a criminal conviction.

### **What is the purpose of the GMC's fitness to practise procedures?**

The GMC's primary duty is to protect patients. Where a doctor's fitness to practise is in doubt, and patient safety may be compromised, the GMC has legal powers to take action. We can do this where a doctor's fitness to practise may be affected by poor skills or performance, ill health, misconduct or a criminal conviction.

For further information [http://www.gmc-uk.org/concerns/the\\_investigation\\_process/the\\_meaning\\_of\\_fitness\\_to\\_practise.pdf](http://www.gmc-uk.org/concerns/the_investigation_process/the_meaning_of_fitness_to_practise.pdf)

### **What is the cost of a hearing?**

Panel members are each paid £300 per day (for lay panellists) and locum expenses (if medical). Legal assessors are also paid £500 per day, but have no part in the decision-making process.

### **What happens if complainants/families withdraw from proceedings in advance of a hearing/once the hearing opens?**

It is possible for the GMC to proceed with the case should a complainant, or witness decide not to take part.

### **How does the GMC decide which cases to take forward?**

We have pursued those cases which raise an issue of possible serious professional misconduct (old rules and procedures) or impaired fitness to practise (current procedures).

### ***Dependent on outcome of hearing:***

### **Can the GMC's decision about this doctor be appealed?**