

DRAFT REPLY TO LETTER FROM DCI NIVEN DATED 12.10.04

Thank you for letter dated 12 October 2004, which helpfully summarises our discussions on 6 October 2004.

We welcome your proposal to provide us with your records relating to category 2 cases.

With regard to your criteria for disclosure, it is necessary for me to set out our position on criteria 1 and 2 in a little detail.

As you are aware, our Preliminary Proceedings Committee (PPC) has already considered allegations against some nurses. These allegations fall to be dealt with under our old rules. Any material provided by you relating to these allegations will be considered by the PPC, which sits in private. However, in the course of the PPC proceedings, it may be necessary to disclose material to others such as the nurse in question, his or her representatives, expert witnesses, complainants and witnesses.

Any new allegations received after 1 August 2004 must be dealt with under our new rules. They will be considered in the first instance by an Investigating Committee (IC). When considering allegations, the IC's position is similar to the PPC in that it sits in private, but its procedures may require the disclosure of material to third parties.

As I mentioned during our meeting, our old rules contain provisions allowing the PPC to order that a practitioner's registration be suspended on an interim basis pending resolution of the allegations. Again, the PPC's deliberations take place in private. However, any interim suspension order must be made public.

Under the new rules, the IC has the power to make an interim suspension order or an interim conditions of practice order. The new rules require that interim orders hearings take place in public unless, having considered representations from the parties and any third parties, the IC considers that it is in the interests of any party or third party, or the public interest, to hold the hearing in private. Even if an IC interim order hearing has taken place in private, the fact that an interim order has been made must be made public.

From this, you will appreciate that I am unable to give a categorical assurance that there will be no publicity of the NMC's proceedings prior to any criminal trial. In cases where there is no interim order, matters will be private. However, it is up to the PPC (or IC, under the new rules) to decide whether an interim order is necessary.

In cases where the IC decides to consider making an interim order, we would represent to the IC that the hearing should be held in private in light of the public interest in avoiding potentially prejudicial publicity, and it would be open to the police to submit their own representations in support of this. However, the final decision is the Committee's.

Our powers and procedures in this respect are very similar to those of the GMC. It may be that you have already discussed these issues with the GMC and found a way forward. If that is the case, perhaps we could agree to proceed on a similar basis.

With regard to your criteria 3, 4 and 5, I do not see any difficulty.

Finally, with regard to criteria 6, I confirm that our normal practice is to wait until the conclusion of any relevant criminal investigation and trial before holding a substantive hearing into the allegation made to the NMC.

Please do not hesitate to contact us if you require any further information about our procedures. No doubt you will wish to revert to me once you have considered the matters I have raised relating to interim orders.

Please be assured of our continued desire to co-operate with you to achieve a satisfactory arrangement for the early disclosure of the material.